

**DOCKET NUMBER 121-2**

1 L. Scott Keehn, SBN 61691  
 2 Leslie F. Keehn, SBN 199153  
**2 KEEHN & ASSOCIATES**  
 3 A Professional Corporation  
 4 402 West Broadway, Suite 1210  
 San Diego, California 92101  
 Telephone: (619) 400-2200

5 Attorneys for **Petitioning Creditors**

8  
**UNITED STATES BANKRUPTCY COURT**  
 9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10  
 11 In Re: ) Case No. 05-05926-PBINV  
 12 FRANCIS J. LOPEZ, ) **DECLARATION OF L. SCOTT KEEHN IN**  
 13 Alleged Debtor. ) **SUPPORT OF MOTION FOR AN**  
 ) **ORDER IMPOSING TERMINATING**  
 ) **SANCTIONS AGAINST THE DEBTOR**  
 14 ) **[BIFURCATED PHASE II]**  
 15 ) Date: January 28, 2008  
 16 ) Time: 10:30 a.m.  
 17 ) Judge: The Honorable Peter W. Bowie  
 18 ) Ctrm: 4  
 19 )  
 \_\_\_\_\_)

20 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
 21 before the United States District Court for the Southern District of California. I am a shareholder  
 22 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
 23 personal knowledge of the factual matters stated herein.

24 2. The “Declaration of L. Scott Keehn in Support of Petitioning Creditors’ Motion for  
 25 an Enforcement Order: (1) Imposing Monetary Sanctions Against the Debtor; and (2) Imposing  
 26 Evidentiary Sanctions Against the Debtor” was filed herein by my office on May 24, 2007, and is  
 27  
 28

1 incorporated herein by this reference.<sup>1</sup> In that Declaration, I summarized the delay and *bad faith*  
2 dilatory discovery tactics employed by Lopez during the 6-month period of December 3, 2006  
3 through May 23, 2007.

4       3.       The “Declaration of L. Scott Keehn Re: Motion for an Enforcement  
5 Order imposing Monetary Sanctions Against the Debtor” was filed herein by my office on  
6 October 19, 2007, and is incorporated herein by this reference.<sup>2</sup> In that Declaration I:  
7 (a) summarized the delay and *bad faith* discovery tactics employed by Lopez in connection with  
8 his deposition during phase two of these bifurcated proceedings; and (b) referred the Court to the  
9 Declaration of Timothy P. Dillon filed herein on September 27, 2007,<sup>3</sup> describing Lopez’s similar  
10 pattern of *bad faith* and tactics of delay in other cases involving Petitioning Creditor Alan Stanly.

11       4. I was present at the hearing in this matter on November 19, 2007 when the Court  
12 granted Petitioning Creditors' second sanctions motion, and ordered Lopez to pay Petitioning  
13 Creditors \$8,130.50 in monetary sanctions on or before December 19, 2007 (30 days from the date  
14 of the Court's order).<sup>4</sup> As of the date of this Declaration, Lopez has failed to pay any portion of  
15 those sanctions.

16        5. Petitioning Creditors have no reason to believe that Lopez will comply with any  
17 additional discovery order imposing monetary sanctions. Thus, a terminating sanction appears to  
18 be the only meaningful response to Lopez's consistent course of misconduct.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is  
20 true and correct, and that this Declaration was executed this 27th day of December, 2007, at San  
21 Diego, California.

//s// L. Scott Keehn  
**L. Scott Keehn**

See Exhibit A, Docket Item 105 (attachment #2).

See Exhibit B, Docket Item 114 (attachment #2).

See Exhibit C, Docket Item 111 (attachment #1).

See Docket Item 117.

# **EXHIBIT A**

1 L. Scott Keehn, SBN 61691  
 2 Leslie F. Keehn, SBN 199153  
 3 **KEEHN & ASSOCIATES**  
 4 A Professional Corporation  
 402 West Broadway, Suite 1210  
 San Diego, California 92101  
 Telephone: (619) 400-2200

5 Attorneys for Petitioning Creditors

6

7

8 **UNITED STATES BANKRUPTCY COURT**  
 9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10

11 In Re: ) Case No. 05-05926-PBINV  
 12 FRANCIS J. LOPEZ, ) Involuntary Chapter 7  
 13 Alleged Debtor. )  
 14 ) DECLARATION OF L. SCOTT KEEHN IN  
 15 ) SUPPORT OF PETITIONING  
 16 ) CREDITORS' MOTION FOR AN  
 17 ) ENFORCEMENT ORDER: (1) IMPOSING  
 18 ) MONETARY SANCTIONS AGAINST THE  
 19 ) DEBTOR; AND (2) IMPOSING  
 20 ) EVIDENTIARY SANCTIONS AGAINST  
 21 ) THE DEBTOR  
 22 ) [BIFURCATED PHASE II]  
 23 )  
 24 ) Date: June 25, 2007  
 25 ) Time: 10:30 a.m.  
 26 ) Judge: The Honorable Peter W. Bowie  
 27 ) Ctrm: 4

28 I, L. Scott Keehn, declare:

29 1. I am an attorney at law, duly licensed to practice before all courts of this State, and  
 30 before the United States District Court for the Southern District of California. I am a shareholder  
 31 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
 32 personal knowledge of the factual matters stated herein.

33 2. On November 03, 2006, my office served Lopez with Petitioning Creditors' First  
 34 Set of Written Discovery for Phase II (the "Phase II Written Discovery"), consisting of: (1) First

1 Phase II Requests for Admission Propounded by Petitioning Creditors [10 Requests]; (2) First  
 2 Phase II Request for Production of Documents by Petitioning Creditors [162 categories of  
 3 documents]; and (3) First Phase II Interrogatories Propounded by Petitioning Creditors [35  
 4 Interrogatories]. True and correct copies of the Phase II Written Discovery are attached hereto,  
 5 marked Exhibits A, B and C respectively. Lopez's responses were due on December 4, 2006.

6       3.       On December 03, 2006, Lopez served his "Response to Requests for Admission  
 7 Propounded to Alleged Debtor Francis J. Lopez (Phase II)." **Lopez's responses were deficient,**  
 8 **and Lopez failed to verify the responses.**

9       4.       On December 05, 2006, Lopez served his "Response to Interrogatories Propounded  
 10 to Alleged Debtor Francis J. Lopez (Phase II). **Lopez's responses were deficient, and Lopez**  
 11 **failed to verify the responses.** At the same time, Lopez served his "Response to Requests for  
 12 Production of Documents." **Lopez's responses were deficient.**

13       5.       On December 13, 2006, I sent a *meet and confer* letter to Lopez's attorney, M.  
 14 Jonathan Hayes, notifying him of the deficiencies in Lopez's responses to the Phase II Written  
 15 Discovery.

16       6.       On December 15, 2006, attorney Hayes and I participated in a telephonic *meet and*  
 17 *confer* conference wherein the parties agreed that Lopez would provide supplemental responses to  
 18 the Phase II Written Discovery on or before January 12, 2007.

19       7.       On January 12, 2007 – the Deadline for Lopez to provide the promised  
 20 supplemental responses to the Phase II Written Discovery – **Lopez failed, without explanation,**  
 21 **to provide supplemental responses to the Phase II Written Discovery.**

22       8.       On January 19, 2007, I sent a follow-up *meet and confer* letter to attorney Hayes  
 23 requesting an explanation regarding Lopez's failure to provide the promised supplemental  
 24 responses to discovery, and notifying Lopez of the imminent likelihood of a motion to compel his  
 25 responses to the Phase II Written Discovery. **Lopez failed, without explanation, to respond to**  
 26 **that *meet and confer* letter.**

27       9.       On January 29, 2007, Petitioning Creditors filed a Motion to Compel responses to  
 28 the Phase II Written Discovery. **Lopez failed, without explanation, to respond or file an**

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 302 WEST BROADWAY, SUITE 1210  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 460-2200 • FACSIMILE (619) 460-2201

1 **Opposition to that Motion.**

2       10. On March 10, 2007 – a Saturday, just two days prior to the scheduled hearing on  
 3 Petitioning Creditors' Motion to Compel Lopez's responses to the Phase II Written Discovery –  
 4 attorney Hayes emailed me approximately 155 pages of documents, purportedly in response to the  
 5 "First Phase II Request for Production of Documents by Petitioning Creditors." **This last-minute**  
 6 **"document dump"** was **improper because the documents: (1) were not responsive to the**  
 7 **Requests, (2) were not organized by category of Request, and (3) consisted of at least 103**  
 8 **pages of pleadings filed in the San Diego Superior Court which are already in the Petitioning**  
 9 **Creditors' possession. Lopez failed, without explanation, to explain the deficiencies and/or**  
 10 **his failure to provide the agreed-upon supplemental responses.**

11       11. On March 12, 2007, I appeared at the hearing during which this Court granted  
 12 Petitioning Creditors' motion to compel Lopez to provide supplemental responses to the Phase II  
 13 Written Discovery.<sup>1</sup> The Court ordered Lopez to provide the supplemental responses on or before  
 14 April 11, 2007. The Court — in open session — indicated that it was deferring its ruling on the  
 15 request for monetary sanctions of \$4,242 because: (a) it wanted the risk of those sanctions to serve  
 16 as a *Sword of Damocles* to encourage compliance with the Court's order; and (b) Lopez would  
 17 have to "work his way out of those sanctions."

18       12. On April 10, 2007, Lopez mailed my office a set of supplemental responses to the  
 19 Phase II Written Discovery which were patently deficient in that, i.e., they failed to fully respond  
 20 to the Interrogatories asked, failed to provide facts in support of asserted denials to the Requests  
 21 for Admissions, and failed to produce responsive documents. True and correct copies of Lopez's  
 22 supplemental responses are attached hereto marked Exhibits D, E and F.

23       13. On May 11, 2007, the parties, through their counsel, attended a status conference  
 24 wherein this Court ordered Lopez to file proper supplemental responses to the Phase II Written  
 25 Discovery on or before May 21, 2007. Later that afternoon, I met with attorney Hayes at my office  
 26 regarding the deficiencies in Lopez's supplemental responses to the Phase II Written Discovery.

27

---

28       1       See, Docket Item #93.

1 Attorney Hayes requested that I set forth the deficiencies in a *meet and confer* letter to him.

2       14. As requested, on May 14, 2007, I sent a *meet and confer* letter via email and first  
 3 class United States mail to attorney Hayes which enumerated each and every deficiency in Lopez's  
 4 supplemental responses to the Phase II Written Discovery. A true and correct copy of that letter is  
 5 attached hereto, marked Exhibit G.

6       15. After the close of business, at 7:10 P.M., on May 21, 2007 – the deadline for Lopez  
 7 to supplement his supplemental responses to the Phase II Written Discovery – attorney Hayes  
 8 emailed me a request for two additional days for Lopez to supplement his responses to the Phase II  
 9 Written Discovery. The next morning, on May 22, 2007, I responded to attorney Hayes' email by  
 10 indicating that I would grant the requested two-day extension of time, in exchange for a stipulation  
 11 providing Petitioning Creditors with an equivalent two-business-day extension of time – from May  
 12 25, 2007 to May 30, 2007 – to file any necessary discovery motion. A true and correct copy of that  
 13 email correspondence is attached hereto, marked Exhibit H.

14       16. On May 23, 2007, attorney Hayes sent me an email wherein he withdrew Lopez's  
 15 request for an extension of time, and notified me that Lopez would not be providing any additional  
 16 responses to the Phase II Written Discovery. A true and correct copy of that email correspondence  
 17 is attached hereto, marked Exhibit I.

18       I declare under penalty of perjury under the laws of the United States that the foregoing is  
 19 true and correct, and that this Declaration was executed this 24th day of May, 2007, at San Diego,  
 20 California.

21         
 22       \_\_\_\_\_  
 23       /s/ L. Scott Keehn  
 24       L. Scott Keehn

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 402 WEST BROADWAY, SUITE 1210  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 400-2200 FAX/FAX (619) 400-2201

# **EXHIBIT B**

1 L. Scott Keehn, SBN 61691  
2 Leslie F. Keehn, SBN 199153  
2 **KEEHN & ASSOCIATES**  
3 A Professional Corporation  
3 402 West Broadway, Suite 1210  
4 San Diego, California 92101  
4 Telephone: (619) 400-2200

## 5 Attorneys for Petitioning Creditors

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

22 I, L. Scott Keehn, declare:

23       1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
24 before the United States District Court for the Southern District of California. I am a shareholder  
25 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
26 personal knowledge of the factual matters stated herein.

27       2. The "Declaration of L. Scott Keehn in Support of Petitioning Creditors' Motion for  
28 an Enforcement Order: (1) Imposing Monetary Sanctions Against the Debtor; and (2) Imposing

1 Evidentiary Sanctions Against the Debtor" was filed herein by my office on May 24, 2007, and is  
 2 incorporated herein by this reference.<sup>1</sup> In that Declaration, I summarized the delay and *bad faith*  
 3 discovery tactics employed by Lopez during the 6-month period of December 3, 2006 through  
 4 May 23, 2007.

5       3. On March 12, 2007, the Court ordered Lopez to provide supplemental discovery  
 6 responses on or before April 11, 2007. The Court — in open session — indicated that it was  
 7 deferring its ruling on the request for monetary sanctions of \$4,442 because: (a) it wanted the risk  
 8 of those sanctions to serve as a *Sword of Damocles* to encourage compliance with the Court's  
 9 order; and (b) Lopez would have to "work his way out of those sanctions." Unfortunately, Lopez  
 10 is apparently unimpressed with either this Court's order or the threat of sanctions.

11       4. On June 25, 2007, the Court conducted its hearing on Petitioning Creditors' request  
 12 for monetary and evidentiary sanctions based on Lopez's dilatory tactics up to that time.<sup>2</sup> The  
 13 Court deferred again the imposition of previously requested monetary sanctions (\$4,442.00), but  
 14 ordered the imposition of evidentiary sanctions precluding Lopez's use of any documents which he  
 15 had not yet produced.<sup>3</sup>

16       5. On the courthouse steps following the June 25, 2007 hearing, I conferred with  
 17 Lopez's attorney Jonathan Hayes regarding Petitioning Creditors' request to take Lopez's  
 18 deposition. At that time, I stated that I would like to calendar the deposition before July 31, 2007  
 19 because I would be out of my office for virtually the entire month of August. Mr. Hayes and I  
 20 agreed that either July 20 or July 27 would work on our calendars, and Mr. Hayes indicated that  
 21 he would inquire as to Lopez's availability on those dates.

22       6. Three days later, on June 28, 2007, Mr. Hayes transmitted to me the following  
 23 email message: *"I have spoken to my client about the deposition dates we discussed, July 20 or 27.  
 24 He is checking his calendar. I will let you know shortly."* (Emphasis added.)

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25       <sup>1</sup> See Exhibit 1, Docket Item 105 (attachment #2).

26       <sup>2</sup> See Exhibit 2, Docket Item 110 [Transcript of the June 25, 2007 hearing ("6/25/07  
 27 Transcript")].

28       <sup>3</sup> See Exhibit 2, 6/25/07 Transcript at p. 17.

1       7.    Twenty-two days later — in the early evening of July 20, 2007 — Mr. Hayes  
 2 transmitted an email suggesting, for the first time, July 31, 2007, as an available date for the  
 3 deposition.

4       8.    Given that July 31, 2007 would be my last day in the office before a 30-day  
 5 vacation, I knew I would be fully consumed with matters necessary to be completed in preparation  
 6 for that absence. Because of that, and because of the fact that I had received absolutely no  
 7 communication from Mr. Hayes' office following the June 28, 2007 email, my office issued and  
 8 mailed to Mr. Hayes a notice of Lopez's deposition for Tuesday, September 11, 2007, at 9:00 a.m.  
 9 in our office.

10      9.    On July 31, 2007, there was a further Status Conference in the case. I reported to  
 11 the Court the events summarized in paragraphs 5-8 above, including the fact that we had noticed  
 12 Mr. Lopez's deposition for September 11, 2007. Mr. Hayes stated in open court that he would  
 13 communicate that information to Mr. Lopez, and let me know if there was any problem with that  
 14 date. That was the last I heard from Mr. Hayes until September 10, 2007.

15      10.   In the afternoon of September 10, 2007 — less than 24 hours before the deposition  
 16 was scheduled to begin — Lopez's attorney sent me a brief email stating that Lopez was "*unable*  
 17 *to make travel arrangements for the deposition tomorrow.*" The email suggested October 8, 2007  
 18 or October 22, 2007 as possible dates for the deposition. Lopez's deposition is currently  
 19 scheduled for October 22, 2007 at 9:30 a.m. based on Mr. Hayes' representation that it was an  
 20 acceptable date and time.

21      11.   As stated in open court on June 25, 2007,<sup>4</sup> once Lopez's deposition is conducted,  
 22 Petitioning Creditors intend to prepare and file their summary judgment motion to establish that  
 23 Lopez was in fact not paying his debts as they came due as of the date of the involuntary petition.

24      12.   Lopez's past misconduct in this case mirrors his extensive misconduct in other  
 25 litigation involving Lopez and Petitioning Creditor Alan Stanly in other San Diego courts, as  
 26 detailed in the Declaration of Timothy P. Dillon filed herein on September 27, 2007 and

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28      4      See Exhibit 2, 6/25/07 Transcript at p. 18.

1 incorporated herein by this reference.<sup>5</sup> Considering Lopez's pervasive custom and practice of  
2 refusing to perform his duties as a litigant unless and until he is [forensically] bludgeoned into  
3 submission by the court, it appears clear that monetary sanctions should now be imposed.  
4 Without a significant sanctions order, I do not believe that Lopez will ever voluntarily appear for,  
5 and participate in good faith at, his deposition in this case.

6           13. My office spent a total of 13.6 hours preparing this second motion for sanctions to  
7 redress Lopez's discovery abuses. Specifically, attorney Leslie F. Keehn spent 12.6 hours  
8 working on this motion, at her standard hourly rate of \$225.00. I worked 1.0 hour, at my standard  
9 hourly rate of \$320.00. Petitioning Creditors will be billed a total of \$3,155.00 for this motion.

10        14. I have reviewed the applicable time and billing records generated by my office.  
11      True and correct copies of those records are attached hereto as Exhibit 4,<sup>6</sup> and are summarized as  
12      follows: (a) \$2,164.50 for 7.7 hours (attorney and paralegal time) spent preparing the necessary  
13      documents and questions for Lopez's deposition; (b) \$224.00 for 0.7 hours of my time to confer  
14      with attorney Hayes regarding Lopez's last minute failure to appear; and (c) \$6,590.00 for 25.7  
15      hours of total attorney time (including my time and Leslie F. Keehn's time) reviewing the  
16      requisite evidence, and drafting the declarations in support of Petitioning Creditors' renewed  
17      motion for the monetary sanctions originally requested on May 24, 2007.

18        15. With this motion, Petitioning Creditors are seeking monetary sanctions in the total  
19 amount of **\$12,133.50** to fully reimburse them for the fees they have actually incurred as described  
20 in Paragraphs 13 and 14 above.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct, and that this Declaration was executed this 19th day of October, 2007, at San  
23 Diego, California.

/s/ L. Scott Keehn  
L. Scott Keehn

<sup>5</sup> See Exhibit 3, Docket Item 111 (attachment #1).

# **EXHIBIT 1**

1 L. Scott Keehn, SBN 61691  
2 Leslie F. Keehn, SBN 199153  
3 **KEEHN & ASSOCIATES**  
4 A Professional Corporation  
4 402 West Broadway, Suite 1210  
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4 Telephone: (619) 400-2200

Attorneys for Petitioning Creditors

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7

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In R

FRANCIS J. LOPEZ,

Alleged Debtor

Case No. 05-05926-PBINV

## Involuntary Chapter 7

DECLARATION OF L. SCOTT KEEHN IN  
SUPPORT OF PETITIONING  
CREDITORS' MOTION FOR AN  
ENFORCEMENT ORDER: (1) IMPOSING  
MONETARY SANCTIONS AGAINST THE  
DEBTOR; AND (2) IMPOSING  
EVIDENTIARY SANCTIONS AGAINST  
THE DEBTOR

## [BIFURCATED PHASE III]

Date: June 25, 2007

Time: 10:30 a.m.

Judge: The Honorable Peter W. Bowie

Ctrlm: 4

I, L. Scott Keehn, declare:

1. I am an attorney at law, duly licenced to practice before all courts of this State, and before the United States District Court for the Southern District of California. I am a shareholder of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have personal knowledge of the factual matters stated herein.

2. On November 03, 2006, my office served Lopez with Petitioning Creditors' First Set of Written Discovery for Phase II (the "Phase II Written Discovery"), consisting of: (1) First

1 Phase II Requests for Admission Propounded by Petitioning Creditors [10 Requests]; (2) First  
 2 Phase II Request for Production of Documents by Petitioning Creditors [162 categories of  
 3 documents]; and (3) First Phase II Interrogatories Propounded by Petitioning Creditors [35  
 4 Interrogatories]. True and correct copies of the Phase II Written Discovery are attached hereto,  
 5 marked Exhibits A, B and C respectively. Lopez's responses were due on December 4, 2006.

6       3.       On December 03, 2006, Lopez served his "Response to Requests for Admission  
 7 Propounded to Alleged Debtor Francis J. Lopez (Phase II)." Lopez's responses were deficient,  
 8 and Lopez failed to verify the responses.

9       4.       On December 05, 2006, Lopez served his "Response to Interrogatories Propounded  
 10 to Alleged Debtor Francis J. Lopez (Phase II). Lopez's responses were deficient, and Lopez  
 11 failed to verify the responses. At the same time, Lopez served his "Response to Requests for  
 12 Production of Documents." Lopez's responses were deficient.

13       5.       On December 13, 2006, I sent a *meet and confer* letter to Lopez's attorney, M.  
 14 Jonathan Hayes, notifying him of the deficiencies in Lopez's responses to the Phase II Written  
 15 Discovery.

16       6.       On December 15, 2006, attorney Hayes and I participated in a telephonic *meet and*  
 17 *confer* conference wherin the parties agreed that Lopez would provide supplemental responses to  
 18 the Phase II Written Discovery on or before January 12, 2007.

19       7.       On January 12, 2007 – the Deadline for Lopez to provide the promised  
 20 supplemental responses to the Phase II Written Discovery – Lopez failed, without explanation,  
 21 to provide supplemental responses to the Phase II Written Discovery.

22       8.       On January 19, 2007, I sent a follow-up *meet and confer* letter to attorney Hayes  
 23 requesting an explanation regarding Lopez's failure to provide the promised supplemental  
 24 responses to discovery, and notifying Lopez of the imminent likelihood of a motion to compel his  
 25 responses to the Phase II Written Discovery. Lopez failed, without explanation, to respond to  
 26 that *meet and confer* letter.

27       9.       On January 29, 2007, Petitioning Creditors filed a Motion to Compel responses to  
 28 the Phase II Written Discovery. Lopez failed, without explanation, to respond or file an

1      **Opposition to that Motion.**

2            10.    On March 10, 2007 – a Saturday, just two days prior to the scheduled hearing on  
 3 Petitioning Creditors' Motion to Compel Lopez's responses to the Phase II Written Discovery –  
 4 attorney Hayes emailed me approximately 155 pages of documents, purportedly in response to the  
 5 "First Phase II Request for Production of Documents by Petitioning Creditors." This last-minute  
 6 "document dump" was improper because the documents: (1) were not responsive to the  
 7 Requests, (2) were not organized by category of Request, and (3) consisted of at least 103  
 8 pages of pleadings filed in the San Diego Superior Court which are already in the Petitioning  
 9 Creditors' possession. Lopez failed, without explanation, to explain the deficiencies and/or  
 10 his failure to provide the agreed-upon supplemental responses.

11           11.    On March 12, 2007, I appeared at the hearing during which this Court granted  
 12 Petitioning Creditors' motion to compel Lopez to provide supplemental responses to the Phase II  
 13 Written Discovery.<sup>1</sup> The Court ordered Lopez to provide the supplemental responses on or before  
 14 April 11, 2007. The Court — in open session — indicated that it was deferring its ruling on the  
 15 request for monetary sanctions of \$4,242 because: (a) it wanted the risk of those sanctions to serve  
 16 as a *Sword of Damocles* to encourage compliance with the Court's order; and (b) Lopez would  
 17 have to "work his way out of those sanctions."

18           12.    On April 10, 2007, Lopez mailed my office a set of supplemental responses to the  
 19 Phase II Written Discovery which were patently deficient in that, i.e., they failed to fully respond  
 20 to the Interrogatories asked, failed to provide facts in support of asserted denials to the Requests  
 21 for Admissions, and failed to produce responsive documents. True and correct copies of Lopez's  
 22 supplemental responses are attached hereto marked Exhibits D, E and F.

23           13.    On May 11, 2007, the parties, through their counsel, attended a status conference  
 24 wherein this Court ordered Lopez to file proper supplemental responses to the Phase II Written  
 25 Discovery on or before May 21, 2007. Later that afternoon, I met with attorney Hayes at my office  
 26 regarding the deficiencies in Lopez's supplemental responses to the Phase II Written Discovery.

27  
 28            <sup>1</sup>    See, Docket Item #93.

1 Attorney Hayes requested that I set forth the deficiencies in a *meet and confer* letter to him.

2       14. As requested, on May 14, 2007, I sent a *meet and confer* letter via email and first  
 3 class United States mail to attorney Hayes which enumerated each and every deficiency in Lopez's  
 4 supplemental responses to the Phase II Written Discovery. A true and correct copy of that letter is  
 5 attached hereto, marked Exhibit G.

6       15. After the close of business, at 7:10 P.M., on May 21, 2007 – the deadline for Lopez  
 7 to supplement his supplemental responses to the Phase II Written Discovery – attorney Hayes  
 8 emailed me a request for two additional days for Lopez to supplement his responses to the Phase II  
 9 Written Discovery. The next morning, on May 22, 2007, I responded to attorney Hayes' email by  
 10 indicating that I would grant the requested two-day extension of time, in exchange for a stipulation  
 11 providing Petitioning Creditors with an equivalent two-business-day extension of time – from May  
 12 25, 2007 to May 30, 2007 – to file any necessary discovery motion. A true and correct copy of that  
 13 email correspondence is attached hereto, marked Exhibit H.

14       16. On May 23, 2007, attorney Hayes sent me an email wherein he withdrew Lopez's  
 15 request for an extension of time, and notified me that Lopez would not be providing any additional  
 16 responses to the Phase II Written Discovery. A true and correct copy of that email correspondence  
 17 is attached hereto, marked Exhibit I.

18       I declare under penalty of perjury under the laws of the United States that the foregoing is  
 19 true and correct, and that this Declaration was executed this 24th day of May, 2007, at San Diego,  
 20 California.

21   
 22 /s/ L. Scott Keehn  
 23 L. Scott Keehn

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# **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CHIEF JUDGE PETER W. BOWIE, PRESIDING

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)  
FRANCIS J. LOPEZ ) CASE NO. 05-05926-PB  
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- 1) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER
- 2) PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER: A ) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR; AND, B) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA  
MONDAY, JUNE 25, 2007

SAN DIEGO BANKRUPTCY REPORTERS  
BY: LYNETTE ALVES  
P.O.BOX 496  
SOLANA BEACH, CA 92075  
(858) 336-8558

APPEARANCES

**M. JONATHAN HAYES**

LAW OFFICE OF M. JONATHAN HAYES  
21800 OXNARD ST.  
SUITE 840  
WOODLAND HILLS, CA 91367  
(818) 710-3656

**L. SCOTT KEEHN**

KEEHN & ASSOCIATES, APC  
402 WEST BROADWAY, SUITE 1210  
SAN DIEGO, CA 92101  
(619) 400-2200

SAN DIEGO, CALIFORNIA, MONDAY, JUNE 25, 2007, 10:00 A.M.

---- O O O ----

THE CLERK: IN THE MATTER OF FRANCIS J. LOPEZ. TWO MATTERS: CONTINUED STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER; AND, PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER (1) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR; AND, (2) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR.

APPEARANCES, PLEASE.

MR. KEEHN: GOOD MORNING, YOUR HONOR.

SCOTT KEEHN APPEARING ON BEHALF OF THE PETITIONING CREDITORS.

MR. HAYES: GOOD MORNING, YOUR HONOR.

JOHN HAYES APPEARING FOR THE DEBTOR -- ALLEGED DEBTOR.

MR. KEEHN: YOUR HONOR, THIS PARTICULAR ODYSSEY BEGAN BEFORE THANKSGIVING, IF YOU CAN BELIEVE THAT, BACK ON NOVEMBER 3RD.

THE COURT: THAT'S NOTHING AT ALL COMPARED TO ADAMS.

MR. KEEHN: YOU KNOW, I WAS HOPING YOU WOULDN'T JUST CONFINE YOURSELF TO THIS RECORD. AND ALSO THE CASE BEFORE, THERE WERE THIRTEEN MEET AND CONFER LETTERS; AND WE DON'T MEET THAT RECORD, EITHER.

BUT THIS IS AN INVOLUNTARY PETITION. AND WE WERE HOPING TO MOVE IT ALONG WITH A LITTLE MORE ALACRITY THAN YOU MIGHT EXPECT IN --

THE COURT: SO YOU'RE SAYING IT REMAINS INVOLUNTARY?

MR. KEEHN: OH, VERY INVOLUNTARY.

WHAT WE HAVE HERE IN RESPONSE TO OUR REQUEST FOR DISCOVERY

THAT WERE PROMULGATED NOW SEVEN MONTHS AGO; AT FIRST THERE WAS NO RESPONSE AT ALL IN THE APPROPRIATE PERIOD. ALL OBJECTIONS WERE WAIVED. AND WHEN WE MOVED FOR MOTION TO COMPEL THE SANCTIONS. COUNSEL COMES IN AND APOLOGIZES FOR DEBTOR, BEMOANS THE FACT THAT WE'RE ASKING FOR A LOT OF INFORMATION; AND AGREES TO THE COURT'S RULING THAT SUPPLEMENTAL RESPONSES SHOULD BE PROVIDED NOT LATER THAN THE 21ST OF MAY.

WELL, ON THE 21ST OF MAY -- AND, ACTUALLY NOTHING HAPPENED BETWEEN THE TIME THE COURT MADE THAT -- GAVE THE DEBTOR THAT SECOND CHANCE. NOTHING HAPPENED BETWEEN THEN AND MAY 21ST UNTIL SHORTLY AFTER SEVEN IN THE EVENING WHEN MR. HAYES E-MAILED MY E-MAIL WITH A REQUEST FOR A DAY OR TWO EXTENSION.

WELL, I DIDN'T HAVE ANY PROBLEM WITH A DAY OR TWO EXTENSION, AS LONG AS I GET AN EQUAL EXTENSION AND TIME TO REPLY. AS SOON AS I SAW THE E-MAIL THE FOLLOWING MORNING, I RELAYED THAT INFORMATION TO MR. HAYES.

IN RESPONSE TO THAT, I RECEIVED ANOTHER E-MAIL THAT SAID, NO, WE'RE NOT GOING TO PROVIDE ANYTHING ELSE AND WE'RE WITHDRAWING OUR REQUEST FOR EXTENSION.

SO ONCE AGAIN, WE HAVE THE TIME PERIOD PASSING AND, OF COURSE, WE WERE PREJUDICED, NOT IN AN OVERWHELMING DEGREE, BUT NOTICEABLY BY THE FACT THAT IN RESPONSE TO THE FIRST E-MAIL WE HAD ANTICIPATED THAT WE WOULD NOT HAVE TO MEET THE ORIGINAL DEADLINE FOR RESPONSE.

SO, UPON RECEIVING THE WITHDRAWAL E-MAIL, WE QUICKLY

REGROUPED AND DID OUR REPLY -- DID OUR MOTION, RATHER. WE HAD ONLY A FEW DAYS TO DO THAT, GIVEN THE SETTING OF THIS PARTICULAR HEARING IN ORDER TO GIVE AN ADEQUATE TIME TO RESPOND. SO WE DID THAT.

AND WE HAVE WHAT HAS BECOME A FAMILIAR PATTERN. WE HAVE, WHAT PURPORTS TO BE RESPONSES GIVEN ON BEHALF OF MR. LOPEZ; AND, IN FACT, THEY'RE NOT REALLY GOOD-FAITH RESPONSES AT ALL. THEY PROVIDE SOME PAPER, MOST OF WHICH WAS PLEADINGS IN CASES THAT MR. LOPEZ HAD EVERY REASON TO KNOW THAT WE ALREADY HAD AND SO WOULD BE COMPLETELY USELESS.

NOW, THIS PARTICULAR DISCOVERY DISPUTE CREATES A DYNAMIC THAT'S DIFFERENT FROM MOST DISCOVERY DISPUTES, BECAUSE MOST DISCOVERY DISPUTES ARISE IN TRADITIONAL LITIGATION. AND TRADITIONAL LITIGATION IS ALWAYS LOOKING BACK AT AN EVENT AND IS STATIC, IN TERMS OF WHERE THE LIABILITIES WILL FALL. BECAUSE THEY DEPEND ON WHAT HAPPENED BACK WHEN WHATEVER INCIDENT OCCURRED, WHATEVER COURSE OF CONDUCT OCCURRED THAT GAVE RISE TO THE TRADITIONAL LITIGATION. SO YOU'RE ALWAYS LOOKING BACKWARDS AND YOU'RE NOT REALLY CONCERNED ABOUT WHAT'S HAPPENING ON A GOING-FORWARD BASIS.

THE DIFFERENT DYNAMIC THAT'S CREATED IN EVERY INVOLUNTARY PETITION IS THE INVOLUNTARY GAP DYNAMIC. BECAUSE, WHILE DELAY IS ALWAYS PREJUDICIAL TO BRINGING A MATTER TO ITS QUICK AND COST EFFECTIVE CONCLUSION, IT HAS AN AUXILIARY PREJUDICE IN INVOLUNTARY CASES BECAUSE THE DEBTOR IS FREE TO CREATE OBLIGATIONS THAT WILL BECOME INVOLUNTARY GAP

CLAIMS AND LEAPFROG AHEAD IN PRIORITY TO THE CLAIMS OF THE CREDITORS THAT BROUGHT THE ACTION.

AND THAT PARTICULAR FORM OF PREJUDICE IS RENDERED ALL THE MORE DISTURBING BECAUSE THERE'S NO WAY TO MONITOR IT, NO WAY TO QUANTIFY IT. MR. LOPEZ IS OUT THERE. MAYBE HE'S NOT CREATING INVOLUNTARY GAP CLAIMS AND PERHAPS HE IS. BUT THE RISK IS THAT THE UTILITY OF THE REMEDY OF INVOLUNTARY BANKRUPTCY AS A CREDITOR'S REMEDY IS SUBJECT TO THIS FORM OF DILUTION, SIMPLY BECAUSE THE ALLEGED DEBTOR REFUSES -- I WANT TO underscore THAT -- REFUSES TO COMPLY WITH THE DISCOVERY IN GOOD FAITH.

WE ARE TRYING TO NARROW THE ISSUES WITH THE EVIDENCE THAT'S AVAILABLE SO THAT WE CAN PROCEED IN THE SECOND PHASE, AS WE DID IN THE FIRST, TO PRESENT THE ISSUES TO THE COURT IN A SUMMARY JUDGMENT FASHION, BECAUSE WE THINK THIS CASE IS AMENABLE TO SUMMARY JUDGMENT.

AND MR. LOPEZ IS JUST VERY ADROITLY BLOCKING THAT WITH THIS PASSIVE/AGGRESSIVE TACTIC OF HIS, WHERE HE DOESN'T REPLY AT ALL UNTIL HIS BACK IS ABSOLUTELY TO THE WALL AND SOME DRACONIAN CONSEQUENCE MIGHT BEFALL HIM. AND THEN HE'LL RESPOND, BUT HE WON'T REALLY RESPOND IN GOOD FAITH. HE GIVES YOU A PARITY OF GOOD-FAITH, THAT DOES NOT ADVANCE THE PURPOSES OF DISCOVERY.

NOW, WE SHOULDN'T HAVE TO WAIT UNTIL HIS BACK IS AGAINST THE WALL TO GET OUR RESPONSES. WE'RE ENTITLED TO OUR RESPONSES THIRTY DAYS AFTER THEY'RE SERVED, THIRTY-THREE WHEN THEY'RE SERVED BY MAIL.

AND WE'RE LONG PAST THAT WITH THESE DISCOVERY REQUESTS THAT WERE PROMULGATED BACK IN NOVEMBER. AND AS THE OBJECTION DISCLOSES, THE ALLEGED DEBTOR IS WELL AWARE THAT WE'RE DOING, ONCE AGAIN, WHAT WE DID IN THE FIRST PHASE; WE'RE USING THE WRITTEN DISCOVERY AS, TO SORT OF TEE UP THE ISSUES FOR OUR, DEPOSITION EXAMINATION, WHICH IS THE NORMAL WAY TO PROCEED.

SO BY HINDERING AND DELAYING THE DISCOVERY PROCESS IN THE WRITTEN PHASE, HE NATURALLY DEFERS THE ORAL EXAMINATION, WHICH IN TURN DEFERS, ONCE AGAIN, THE DAY OF RECKONING. AND ALL THE WHILE HE'S FREE TO BE OUT THERE INCURRING FURTHER GAP CLAIMS.

SO I THINK THAT WHAT WE'VE SUGGESTED IN OUR PAPERS IS THE APPROPRIATE RESPONSE. NUMBER ONE, THE DEFERRED MONETARY SANCTIONS THAT THE COURT ORIGINALLY AWARDED OF \$42 000 -- EXCUSE ME, I'M DREAMING -- \$4,242. SHOULD BE IMPOSED.

THE -- I DON'T THINK THAT THE RESULT THE COURT HAD HOPED TO ACHIEVE BY DEFERRING IT HAS BEEN ACHIEVED. I DON'T THINK IT EVER WILL BE ACHIEVED. I THINK THAT THIS IS JUST MR. LOPEZ'S LITIGATION TACTIC; HALT, HINDER AND DELAY AND MAYBE I'LL HAVE TO ANSWER SOMEDAY.

THE EVIDENTIARY SANCTIONS THAT WE'VE REQUESTED, I THINK, ARE APPROPRIATE. AND THEY WILL FACILITATE THE PURPOSE OF DISCOVERY, BECAUSE THEY NARROW THE ISSUES FOR US, EVEN WITHOUT THE COOPERATION OF THE ALLEGED DEBTOR.

SO WE WOULD REQUEST THAT THE EVIDENTIARY SANCTIONS BE

IMPOSED AS REQUESTED, AND THAT THE MONETARY SANCTION BE AWARDED FORTHWITH, WITH A DATE CERTAIN ESTABLISHED AS TO WHEN THAT SECTION SHOULD BE PAID.

THE COURT: MR. HAYES.

MR. HAYES: YOUR HONOR, THANK YOU. I HAVE A COUPLE OF COMMENTS.

THE FIRST ONE IS, I WANTED TO COMMENT ON THIS, THE REQUEST I'VE MADE OF MR. KEEHN FOR ANOTHER ONE OR TWO DAYS. I'VE HAD -- MR. LOPEZ LIVES IN FLORIDA, AND I HAVE A HARD TIME COMMUNICATING WITH HIM. WE COMMUNICATE BY E-MAIL AND I HAVE HIS CELL PHONE, AND INEVITABLY, I CATCH HIM WHEN HE'S PICKING HIS KIDS UP OR HE'S IN A STORE OR SOMETHING AND THERE'S THE THREE-HOUR TIME GAP.

ANYWAY, I SPOKE TO HIM VERY BRIEFLY A COUPLE OF TIMES. I SAID, LOOK, WE HAVE TO GET THEM MORE DOCUMENTS.

THERE'S -- MR. KEEHN SENT ME THIS LETTER, WHAT ARE WE GOING TO DO? WE DISCUSSED IT REAL QUICKLY. AND FINALLY, THE TIME CAME WHERE HE ABSOLUTELY HAD TO FILE A RESPONSE, AND THAT'S WHEN I SENT THE E-MAIL TO MR. KEEHN SAYING, GIVE ME ANOTHER DAY OR TWO.

THE FOLLOWING DAY I SPOKE TO MR. LOPEZ AT GREAT LENGTHS. AND WE WENT THROUGH THE LETTER ONE BY ONE. AND I MEAN, THERE ISN'T ANYTHING ELSE WE CAN COME UP WITH. THERE ISN'T ANY OTHER DOCUMENTS EXCEPT THIS ISSUE WITH THE WIFE. THERE ISN'T ANY DOCUMENTS THAT HAVEN'T BEEN TURNED OVER. THERE ISN'T ANY, ANY MORE EXPLANATION OR, OR, MORE DETAILS THAT WE COULD GIVE, OTHER THAN REALLY REPEAT INFORMATION

THAT'S ON VARIOUS -- OF THE MANY STATEMENTS THAT HAVE BEEN TURNED OVER I BELIEVE MANY TIMES BY NOW.

BUT, ADDRESSING THE MOTION, THE MOTION HAS TWO PARTS. ONE IS GRANT THESE SANCTIONS, WHICH I, FRANKLY, BELIEVE HAS ALWAYS BEEN THE GOAL. AND THE SECOND IS THESE EVIDENTIARY SANCTIONS.

AS FAR AS THE SANCTIONS, THE \$4000. I JUST WANT TO SAY AGAIN, I JUST DON'T THINK THERE'S ANY OTHER DOCUMENTS THAT CAN BE TURNED OVER OTHER THAN MRS. LOPEZ'S DOCUMENTS, THERE ARE NO OTHER DOCUMENTS THAT CAN BE TURNED OVER THAT HAVEN'T ALREADY BEEN TURNED OVER.

I BROUGHT MR. LOPEZ'S FIRST DEPOSITION. IT'S 240-SOMETHING PAGES. THIS IS WELL MORE THAN A YEAR AGO. THE REST OF THESE PAPERS ARE EXHIBITS. EVERY STATEMENT OF EVERY ONE OF HIS BILLS OF THE TWENTY OR SO CREDITORS ARE ALL CONSUMER DEBTS. THIS IS WELL MORE THAN A YEAR OLD. MR. KEEHN HAS SENT OUT SEVERAL SUBPOENAS. I'M ACTUALLY NOT SURE WHAT HE'S GOTTEN FROM THOSE. WE PROVIDED MORE DOCUMENTS TWICE IN THIS GO AROUND. IF MR. KEEHN REALLY WANTED TO GET MOVING WITH THIS, JUST TAKE THE DEPOSITION AGAIN. HE'S BEEN TELLING ME HE'S GOING TO TAKE THIS DEPOSITION. HE SOMEHOW CAN'T BECAUSE HE REALLY -- THERE'S SOME MAGICAL PIECE OF PAPER THAT I'M NOT CLEAR ABOUT THAT HE HASN'T GOTTEN YET; AND THEREFORE, HE CAN'T GO FORWARD. THAT'S JUST RIDICULOUS. WITH RESPECT TO THE DOCUMENTS IN MRS. LOPEZ'S POSSESSION, I'VE ACTUALLY NEVER MET MRS. LOPEZ. BUT I MEAN, MY WIFE

HAS A CHECKING ACCOUNT AND SHE CARRIES THE CHECKBOOK AROUND IN HER PURSE. AND I'D BE LOOKING FOR A DIVORCE ATTORNEY IF I WENT INTO HER PURSE AND FOUND HER CHECKBOOK AND STARTED SENDING OFF INFORMATION SOMEBODY HAPPENED TO BE SUING ME.

THE COURT: SO YOU'RE CONTENDING THIS IS ALL SEPARATE PROPERTY, AND HE HAS NO INTEREST WHATSOEVER IN THE FUNDS THAT SHE ADMINISTERS OR THE DEBT SHE'S INCURRED WHETHER IT'S A LEHMAN BROTHERS, OR THE MORTGAGE ON THE HOUSE OR ANY OF THOSE KINDS OF THINGS?

MR. HAYES: I DON'T KNOW IF I'D GET INTO WHETHER IT'S COMMUNITY PROPERTY OR NOT. BUT IF THEY WANT, I MEAN, THEY CAN GO AFTER HER. THEY CAN SUBPOENA HER OR THEY CAN COME IN WITH SOME SORT OF EVIDENCE OF WHY THEY HAVE THE RIGHT TO MAKE MR. LOPEZ --

THE COURT: SO WHAT'S YOUR THEORY, WHAT'S YOUR THEORY ON WHY SHE DOESN'T HAVE TO PROVIDE AN ANSWER WITH RESPECT TO WHAT SHE HAS OR HOLDS OR PAYS, PARTICULARLY, IF HE'S GOT SOME OBLIGATION OR LIABILITY ON IT?

MR. HAYES. THEY HAVEN'T ASKED HER. THEY'RE ASKING HIM.

THE COURT: NO. THAT'S NOT MY QUESTION. MY QUESTION IS, WHAT'S YOUR THEORY FOR WHY HE DOESN'T HAVE TO ANSWER THAT QUESTION?

MR. HAYES: THAT'S HER RIGHT TO PRIVACY.

THE COURT: SO IT'S HER RIGHT TO PRIVACY, BECAUSE IT'S SOME SEPARATE INTEREST OF HERS OR WHAT?

WHERE DOES SHE HAVE A RIGHT TO PRIVACY ON SOMETHING THAT

YOU SAY YOU DON'T GET TO THE COMMUNITY PROPERTY QUESTION. I MEAN, HE'S GOT A COMMUNITY PROPERTY INTEREST IN IT, IF HE'S GOT A STATE STATUTORY RIGHT TO CO-MANAGEMENT OF COMMUNITY ASSETS OR ANYTHING ELSE THAT I HAVE NO IDEA WHAT FLORIDA LAW PROVIDES.

I'M ASKING YOU WHAT YOUR THEORY IS FOR WHY HE DOESN'T HAVE TO ANSWER IT?

MR. HAYES: WELL, FOR ONE THING, FLORIDA IS NOT COMMUNITY PROPERTY. AND I DON'T KNOW HOW FLORIDA LAW IS. BUT WHAT I FOCUSED ON IS MR. LOPEZ, GO TO YOUR WIFE AND GET THESE DOCUMENTS.

THE COURT: NO, POSSESSION -- YOU KNOW, WHAT DOES HE HAVE IN HIS POSSESSION OR CONTROL? WHAT DOES HE HAVE? HAS HE PRODUCED EVERYTHING THAT'S IN HIS POSSESSION OR CONTROL WITH RESPECT TO THAT?

MR. HAYES: OH, ABSOLUTELY. BUT THAT'S --

THE COURT: AND THAT'S INCLUDING AS TO HIS LIABILITY WITH RESPECT TO IT?

MR. HAYES: YES. AS FAR AS I KNOW. BUT THAT DOES RAISE THE QUESTION OF DOES -- IS WHAT'S IN HIS WIFE'S PURSE IN HIS POSSESSION OR CONTROL? I MEAN, THAT'S WHAT HE'S TELLING ME. I CAN'T --

THE COURT: NO. YOUR ANSWER IS, HE HAS NO INTEREST OR OBLIGATION IN THE LEHMAN BROTHERS OR THE MORTGAGE OR WHATEVER IT IS, THEN WHY DON'T YOU AGREE TO THOSE EVIDENTIARY SANCTIONS AS WELL? YOU SAY HE'S TURNED OVER EVERYTHING.

MR. HAYES: WELL, EVERYTHING THAT'S IN HIS POSSESSION OR HIS CONTROL WITHOUT GETTING DIVORCED; YES.

THE COURT: THEN THE ANSWER, IT SEEMS TO ME, IS THAT YOU AGREE TO THE EVIDENTIARY SANCTIONS, SAID THAT HE CANNOT PRODUCE ANYTHING HE HAS NOT ALREADY PRODUCED, COME TIME OF TRIAL WITH RESPECT TO THE ISSUE THAT WE'LL BE LITIGATING IN THIS PHASE 2 OF THIS ISSUE.

MR. HAYES: I MIGHT DO THAT. I HADN'T THOUGHT OF IT, MYSELF.

I WAS FOCUSING ON THE MOTION, WHICH BASICALLY ASKED YOU TO GRANT SUMMARY JUDGMENT TODAY. BUT I WOULD AGREE WITH THE THEORY THAT THINGS -- HE SHOULDN'T BE ABLE TO COME IN WITH SOMETHING AFTER THIS, OR HE SHOULDN'T BE ABLE TO, "QUOTE," "UNQUOTE," FIND SOMETHING, YOU KNOW, TWO DAYS BEFORE TRIAL.

AND I DO BELIEVE EVERYTHING'S BEEN TURNED OVER.

THE COURT: WELL, THAT'S WHAT MR. KEEHN IS -- I HAVE NO IDEA WHAT HIS STRATEGY IS, BUT THAT'S AT LEAST WHAT HE'S ASKING FOR IN THE CONTEXT OF THIS MOTION, BECAUSE HE WANTS TO BE ABLE TO CLOSE THE BOOK AND THEN GO TAKE YOUR CLIENT'S DEPO KNOWING THAT YOUR CLIENT IS NOW PRECLUDED FROM STEPPING UP AND SAYING OH, BUT HERE'S THIS, AND HERE'S THIS AND HERE'S THAT; AND NOT EVER HAVING HAD A CHANCE TO LOOK AT IT OR INDEPENDENTLY VALIDATE IT FROM THIRD PARTIES OR ANY OF THOSE KINDS OF THINGS.

YOU WOULDN'T WALK INTO A DEPO BLIND THAT WAY. I'M CONFIDENT OF THAT.

MR. HAYES: NO. YOU KNOW, WHAT I WAS FOCUSING ON IS THE MOTION SAYS ELIMINATE ALL EVIDENCE ENTIRELY REGARDING EACH ONE OF THESE CATEGORIES; NOT JUST ELIMINATE -- NOT JUST HAVE AN EVIDENTIARY SANCTION THAT WE CAN'T FIND, "QUOTE," "UNQUOTE," FIND MORE DOCUMENTS.

I THINK I WOULD AGREE TO THAT. WHATEVER DOCUMENTS HAVEN'T BEEN TURNED OVER UP TO NOW, I WOULD AGREE TO THAT.

THE COURT: OKAY.

MR. HAYES: I'M NOT SURE I -- YOU KNOW, HE JUST FOUND A JOB AND HE DOESN'T HAVE \$4,400. AND I DON'T KNOW WHAT ELSE I CAN SAY.

YOU SAID, YOU'RE NOT SURE WHAT MR. KEEHN'S STRATEGY IS. I MEAN, IF THEY REALLY WANTED THIS CASE TO BE FINISHED, THEY WOULD HAVE TAKEN HIS DEPOSITION SIX OR EIGHT MONTHS AGO.

THE COURT: I WOULDN'T HAVE. I WAS A LITIGATOR FOR A BUNCH OF YEARS. I'M NOT WALKING INTO A DEPOSITION WHEN THERE'S A WHOLE BUNCH OF DOCUMENTS OUT THERE AND HAVE THEM SURPRISE ME.

MR. HAYES: WELL, I DON'T THINK THERE ARE.

THE COURT: WELL --

MR. HAYES: FOR MONTHS THERE HAVEN'T BEEN A WHOLE BUNCH OF DOCUMENTS OUT THERE, BUT ALL RIGHT, I HAVE NOTHING FURTHER.

THE COURT: OKAY. MR. KEEHN.

MR. KEEHN: YES. THANK YOU, YOUR HONOR.

IN ADDITION TO THE REASONS THAT YOU'VE ALLUDED TO AS TO

WHY YOU WOULDN'T TAKE THE DEPOSITION WITHOUT THE DOCUMENTS, THERE WERE RESPONSES THAT MR. LOPEZ GAVE IN HIS ORIGINAL DEPOSITION A YEAR AGO, NOW, THAT TO THE EFFECT THAT, WELL THERE ARE MORE DOCUMENTS. I JUST HAVE TO LOOK AT THEM. AND OBVIOUSLY THAT'S A DOOR WE NEED TO CLOSE. IF WE GET THE EVIDENTIARY SANCTIONS, AS MR. HAYES SUGGESTED, WE'VE CLOSED THE DOOR.

AND I, IN TERMS OF THE -- IF HE'S AGREEING TO THE SANCTIONS THEN I DON'T NEED TO ADDRESS HOW HELLACIOUS THIS ARGUMENT OF MARITAL STRESS IS CONCERNED. I DID HAVE SOME DOCUMENTS THAT WERE RECENTLY FILED IN THE DISTRICT COURT THAT BLOW THAT OUT OF THE WATER. BUT IF HE'S AGREEING TO IT, I WON'T ADDRESS IT.

AS FAR AS THE MONETARY SANCTION IS CONCERNED, YOUR HONOR, THIS -- WE TRIED TO CLOSE THE DOOR IN A PROCESS THAT BEGAN SEVEN MONTHS AGO. I SHOULDN'T BE HERE SEVEN MONTHS LATER CLOSING IT ON A CAPITULATION TO A SECOND MOTION TO COMPEL THAT I SHOULDN'T HAVE HAD TO FILE.

IF THERE REALLY ARE NO DOCUMENTS, THEN WHY IS THE RESPONSE, WELL, THERE'S MORE THINGS I NEED TO CHECK AND I CAN'T BE SURE. IF THERE REALLY ARE NO DOCUMENTS, THEN WHY WAS THAT ANSWER NOT GIVEN BACK IN MAY? WHY WAS IT NOT GIVEN BACK IN DECEMBER WHEN IT WOULD HAVE BEEN TIMELY? THERE'S NO EXPLANATION FOR THAT.

THIS IS EXACTLY THE KIND OF GAMESMANSHIP THAT RULE ONE OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE ABHORS. THE PURPOSE OF THE RULES, THEMSELVES, IS TO PROVIDE A

MECHANISM AND A FRAMEWORK FOR THE RAPID AND FAIR RESOLUTION OF ISSUES.

NOW, ONE COMMENT, SORT OF, AT LEAST I INFERRED THE ARGUMENT FROM THE FACT THAT WE HAVE TWO TO THREE INCHES OF PAPER FROM THE ORIGINAL DEPOSITION. AND WHY ARE WE STILL HERE A YEAR LATER?

IN ADDITION TO NOT HAVING THE DOCUMENTS PRODUCED, WE ALSO HAVE THE POINT THAT THIS CASE WAS BIFURCATED AT MR. LOPEZ'S REQUEST. THERE WERE MANY QUESTIONS THAT I COULD EASILY HAVE ASKED THE FIRST GO AROUND THAT MIGHT HAVE OBLIVIATED THE NEED FOR FURTHER DEPOSITION, OR AT LEAST REDUCED IT. I COULDN'T BECAUSE OF THE CONSTRAINTS PLACED BY THE BIFURCATION ORDER. AND I TRIED TO ADHERE TO THAT ORDER. SO I HAVE TO TAKE HIS DEPOSITION YET A SECOND TIME. AND THEN ONE OF THE LAST REMARKS THAT COUNSEL MADE, I THINK, UNDERSCORES THE NEED FOR THE SANCTIONS HAVING BEEN IMPOSED BECAUSE IT HIGHLIGHTS THE GAMESMAN-LIKE APPROACH THAT MR. LOPEZ HAS TAKEN. AND THAT, THAT COMMENT WAS, HE JUST GOT A JOB.

WELL, IF BY THAT HE'S REPRESENTING TO THE COURT THAT UP UNTIL THIS TIME HE'S BEEN UNEMPLOYED, I THINK THAT EXACERBATES THE CULPABILITY OF MR. LOPEZ IN NOT TIMELY RESPONDING. WHAT ELSE WAS HE DOING? WAS HE REALLY SPENDING FORTY HOURS A WEEK LOOKING FOR A JOB? IF HE WAS UNEMPLOYED, CERTAINLY HE WOULD HAVE HAD MORE TIME AVAILABLE TO TEND TO HIS DUTIES AS A LITIGANT THAN A FULLY-EMPLOYED INDIVIDUAL WOULD. AND EVEN A

FULLY-EMPLOYED INDIVIDUAL IS EXPECTED TO RESPOND AND RESPOND TIMELY TO DISCOVERY OBLIGATIONS.

AS I SAID IN THE BEGINNING, WE DON'T KNOW TODAY, AND WE WON'T KNOW UNTIL THAT ORDER FOR RELIEF IS ENTERED AND SCHEDULES ARE FILED, IF THAT EVER HAPPENS. HOW MUCH THIS ESTATE AND THE GENERAL UNSECURED CREDITORS THAT BROUGHT THIS POSITION HAVE BEEN PREJUDICED BY THIS DELAY AND THE INCURRING OF GAP CLAIMS?

I THINK THAT MESSAGE THE COURT SENT THE FIRST TIME TO MR. LOPEZ WAS, I'LL GIVE YOU ANOTHER CHANCE. I THINK THE MESSAGE THAT THE COURT NEEDS TO SEND TO MR. LOPEZ NOW IS, THIS ISN'T A GAME. AND THERE AREN'T ANY MORE CHANCES. AND YOU DIDN'T PLAY BY THE RULES, AND SO THE SHIELD THAT I PUT IN FRONT OF YOU BEFORE, IS NOW DOWN. AND THESE SANCTIONS ARE DUE AND PAYABLE.

THE COURT: WELL, IN MY VIEW, AT LEAST AT THIS POINT IN TIME AND ON THE PRESENT STATE OF THE RECORD, THE EVIDENTIARY SANCTIONS ARE WARRANTED, AND WILL BE ORDERED IN THE FOLLOWING RESPECTS:

WITH RESPECT TO DEBTOR'S RESPONSE TO REQUEST FOR ADMISSION NUMBER FIVE, THAT WILL BE, AND THE DEBTOR HAS AGREED, THAT WILL BE AN UNQUALIFIED ADMISSION;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS FROM NOVION BETWEEN JANUARY 1 OF 2005 TO JULY 1 OF 2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED FROM JANUARY 1, 2005 TO JULY 1,

2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED BY HIS WIFE BETWEEN JANUARY 1, 2005 AND JULY 1 OF 2005. AND I WILL ADD, AS TO THESE PROHIBITIONS, THAT'S TO THE EXTENT NOT ALREADY DISCLOSED TO THE MOVING CREDITORS, THE PETITIONING CREDITORS. IF IT'S BEEN DISCLOSED, THEN IT'S THERE. THERE'S NO PRECLUSION OF USE OF THAT INFORMATION IF IT'S BEEN PREVIOUSLY PROVIDED TO THE PETITIONING CREDITORS, IN THE CONTEXT OF THE DISCOVERY OF THIS CASE;

THE DEBTOR WILL BE PROHIBITED FROM PROVIDING ANY EVIDENCE OF A DEBT IN FAVOR OF LEHMAN BROTHERS OR ANY PAYMENT TO LEHMAN BROTHERS AS OF THE PETITION DATE EXCEPT TO THE EXTENT AND SAME PROVISO, EXCEPT TO THE EXTENT ALREADY DISCLOSED TO THE COUNSEL FOR PETITIONING CREDITORS;

AND, DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF DEBT IN FAVOR OF AMERICAN EXPRESS, BANK OF AMERICA, BANK CARD, CINGULAR, CITI CARD, HOUSEHOLD BANK, NORTHWEST FLORIDA DAILY NEWS, CITIBANK QUICKEN, TEXACO, VERIZON, UNION BANK, OR MR. GORRILL OR ANY PAYMENT TO ANY OF THEM AS OF THE PETITION DATE, EXCEPT TO THE EXTENT ALREADY PROVIDED THE COUNSEL FOR PETITIONING CREDITORS IN THE CONTEXT OF THE DISCOVERY IN THIS MATTER.

AS TO THE MONETARY SANCTIONS, I AM, AGAIN, GOING TO DEFER AWARDING THOSE. BUT THEY REMAIN THE SORT OF DAMOCLES OVER MR. LOPEZ. BECAUSE I DON'T KNOW THE ANSWER TO SOME OF MR. KEEHN'S SPECULATION AS TO WHAT'S GOING ON. MR. KEEHN

IS CONVINCED THAT THIS IS A GAME THAT MR. LOPEZ IS PLAYING.

I'M NOT YET CONVINCED OF THAT.

SO EVENTUALLY WE WILL GET TO THE ANSWER ONE WAY OR THE OTHER. AND ONCE I KNOW THE ANSWER, I'LL APPLY THEM, IF I DEEM THAT'S APPROPRIATE AT THE TIME. BUT THE EVIDENTIARY SANCTIONS AT THIS POINT IN TIME ARE WARRANTED.

I'LL SIGN AN ORDER TO THAT EFFECT.

MR. KEEHN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. NOW, WE HAVE A STATUS CONFERENCE. TIMING.

ARE YOU, NOW, LOOKING AT THE DEPOSITION, MR. KEEHN?

MR. KEEHN: I AM. AND CONSISTENT WITH THE LOCAL RULES, I NEED TO CONFER WITH COUNSEL AS TO AVAILABLE DATES.

MR. HAYES: I HAVE TO BE BACK HERE JULY 31ST. THAT'S A LITTLE QUICK, BUT I'M GOING TO BE HERE ANYWAY.

THE COURT: JULY 31ST? THAT'S A TUESDAY.

MR. KEEHN: YES.

THE COURT: WHAT TIME IS YOUR HEARING ON THE 31ST?

MR. HAYES: AT 10:00. IT'S A SUMMARY JUDGMENT MOTION, SO IT COULD BE IN THE AFTERNOON; SUMMARY JUDGMENT MOTION THAT HASN'T BEEN FILED.

THE COURT: WE COULD DO 2:00 P.M. ON THE 31ST. DOES THAT WORK?

MR. KEEHN: IT'S CLEAR ON MY CALENDAR, YOUR HONOR.

MR. HAYES: 2:00?

THE COURT: OKAY. AND WE'LL DO THAT AS A FURTHER STATUS CONFERENCE. BUT IN THE MEANTIME, I ASSUME THE TWO

OF YOU WILL MEET AND CONFER ON A DEPOSITION DATE. AND THEN  
ONCE THE DEPOSITION IS CONCLUDED, I ASSUME MR. KEEHN,  
YOU'RE PLANNING A MOTION?

MR. KEEHN: I AM.

THE COURT: JUST SO MR. HAYES SEES WHAT'S COMING AND  
THEN WE'LL -- ONCE THAT MOTION'S DECIDED, WE'LL KNOW WHERE  
WE GO NEXT, IF ANYWHERE.

MR. HAYES: GREAT.

MR. KEEHN: THANK YOU, YOUR HONOR.

MR. HAYES: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, LYNETTE ALVES, OFFICIAL REPORTER, DO HEREBY  
CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS HELD IN THE FOREGOING CAUSE ON THE 25TH DAY OF JUNE, 2007; THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; AND, THAT THE FOREGOING TRANSCRIPT CONTAINS A CORRECT STATEMENT OF THE PROCEEDINGS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

---

LYNETTE ALVES, CSR #12534, RPR #61256

# **EXHIBIT 3**

1 L. Scott Keehn, SBN 61691  
2 Leslie F. Keehn, SBN 199153  
3 KEEHN & ASSOCIATES  
4 A Professional Corporation  
5 402 West Broadway, Suite 1210  
San Diego, California 92101  
Telephone: (619) 400-2200

## 5 | Attorneys for Petitioning Creditors

6

7

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10

11 In Re: Case No. 05-05926-PBINV  
12 FRANCIS J. LOPEZ, DECLARATION OF TIMOTHY P. DILLON  
13 Alleged Debtor. [BIFURCATED PHASE II]  
14 Date: October 1, 2007 (Status Conference)  
15 Time: 10:30 a.m.  
16 Judge: The Honorable Peter W. Bowie  
17 Ctrm: 4  
18  
19

20 I, TIMOTHY P. DILLON, declare as follows:

21       1. I am an attorney duly admitted to practice before the Courts of this State. I am a  
22 shareholder of the law firm of Dillon & Gerardi, APC, counsel for Petitioning Creditor Alan  
23 Stanly ("Stanly") in certain cases involving the alleged debtor herein, Francis J. Lopez ("Lopez"),  
24 which were and/or are pending before the San Diego Superior Court and the United States District  
25 Court for the Southern District of California (the "Additional Lopez Cases"). In connection with  
26 the Additional Lopez Cases, I am the *shareholder in charge* of the engagement of the firm on  
27 behalf of Stanly, and the attorney within the firm who is most knowledgeable with respect to all  
28 aspects of the Additional Lopez Cases. I make this Declaration based upon facts within my

1 firsthand knowledge acquired in the course of conducting litigation against Lopez in the  
2 Additional Lopez Cases.

3           2. The delay and bad-faith litigation tactics employed by Lopez and his counsel  
4 throughout the Additional Lopez Cases are summarized below.

*Union Bank of California v. Francis J. Lopez, et. al.*

San Diego Superior Court(Case No.: GIN 030827)

Case Summary (06/2003 - 09/2004):

8           3.       In or about June of 2003, Union Bank of California initiated a litigation against  
9 both Lopez and Stanly as guarantors of a loan which their corporation, Prism, had defaulted on.  
10 Both Lopez and Stanly filed cross-claims against each other for contribution and indemnity.  
11 Lopez and Stanly eventually settled with Union Bank. Stanly prevailed on a motion for good faith  
12 settlement and obtained a dismissal of Lopez's cross-claims. At time of trial, the sole issues left in  
13 the case were Stanly's claims against Lopez for indemnity and contribution. Trial in the Union  
14 Bank matter was continued several times due to Lopez's dilatory conduct, as more fully set forth  
15 below. When the Court finally held trial, neither Lopez nor his counsel appeared. Trial proceeded  
16 without Lopez.

#### Summary of Dilatory / Bad Faith Tactics:

18       4.      On March 9, 2004, Lopez requested a trial continuance due to the "illness of his  
19 wife's aunt." Based on that request, the parties ultimately stipulated to continue the trial for four  
20 months — until July 9, 2004.

5. On July 2, 2004 — the date of the trial readiness conference — Lopez's attorney,  
Joseph Fischbach ("Fischbach"), faxed a "Declaration re: Non-Readiness for Trial" to my office.  
A true and correct copy of that Declaration is attached hereto as Exhibit 1 to the "Compendium of  
Exhibits in Support of Renewed Request for an Enforcement Order Imposing Monetary Sanctions  
Against Alleged Debtor Francis J. Lopez" (hereinafter referred to as the "Exhibits Compendium")  
filed concurrently herewith. In his Declaration, Fischbach stated that he would be unable to  
appear for trial because he had scheduled another trial for July 7, 2004. This was the first time  
Fischbach had ever indicated that he would be unable to attend trial. He did not personally appear

KEEHN & ASSOCIATES, APC  
ATTORNEYS AND COUNSELORS AT LAW  
402 WEST BROADWAY, SUITE 1210  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 220-2201 FAX/TELE (619) 400-2201

1 at the trial readiness conference. Instead, Fischbach sent an *appearance counsel* to the trial  
 2 readiness conference who was not affiliated with Fischbach's law firm, and was unfamiliar with  
 3 the case. Because a "Declaration for Non-Readiness for Trial" is not a proper method of obtaining  
 4 a trial continuance, and Lopez did not properly apply for a continuance of trial, the Court had no  
 5 legal basis on which to order a continuance. The Court then confirmed that trial call would  
 6 remain set for July 9, 2004.

7       6. On July 9, 2004, Lopez and his counsel failed to appear for trial, and the trial court  
 8 issued an Order to Show Cause as to why sanctions should not be issued against them. A true and  
 9 correct copy of the Order is attached as Exhibit 2 to the Exhibits Compendium.

10       7. On July 16, 2004, Fischbach appeared before the Court and confirmed that he was  
 11 in trial on another matter on the dates set for trial in *Union Bank of California v. Francis J. Lopez*,  
 12 *et. al.* and stated that his failure to appear at the scheduled trial date was due to a mix-up with  
 13 co-counsel. No declaration of co-counsel was ever provided to corroborate the existence of the  
 14 mix-up or how it came to be. Additionally, Lopez provided declarations to the Court from himself  
 15 and his physician stating Lopez was suffering from "diverticulitis" and was too ill to participate in  
 16 a trial. A true and correct copy of the Declarations is attached as Exhibit 3 to the Exhibits  
 17 Compendium. This was the first time the Court had been advised of Lopez's purported  
 18 diverticulitis. Stanly was aware that Lopez could easily induce the aggravating symptoms of his  
 19 condition by eating popcorn. The Court continued the trial for approximately 60 days — until  
 20 September 10, 2004.

21       8. On September 9, 2004 — one day before the twice-continued trial was set to begin  
 22 — Lopez applied *ex parte* for a third trial continuance. A true and correct copy of the Ex Parte  
 23 Application is attached as Exhibit 4 to the Exhibits Compendium. Lopez claimed he was still  
 24 suffering from diverticulitis, and that the medication he took for it made him "groggy."<sup>1</sup> Lopez  
 25 further stated that he could not appear for trial due to scheduled colonoscopy and endoscopy

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 401 WEST BROADWAY, SUITE 1100  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 467-2201 FAX (619) 467-2201

26  
 27  
 28       1       See, Exhibits Compendium Tab 4.

1 procedures.<sup>2</sup> The evidence in support of Lopez's application was defective in that the declarations  
2 were not signed under penalty of perjury under the laws of the State of California. The Court  
3 ordered the application continued until September 10, 2004, and the Court's minute order  
4 provided precise instructions to Lopez as to how to provide a competent declaration. A true and  
5 correct copy of that Order is attached as Exhibit 5 to the Exhibits Compendium.

6       9.     On September 10, 2004, Stanly appeared with a proposal for the commencement of  
7 trial. Lopez appeared through *appearance counsel* who was not affiliated with Fischbach's law  
8 firm, and was unfamiliar with the status of the case. Despite the Court's specific instruction, no  
9 competent declaration was provided to support Lopez's request for a third trial continuance.  
10 Based on that, the Court denied his request.

11       10. Trial proceeded on September 14, 2004, wherein Stanly obtained a judgment  
12 against Lopez for \$50,000.

*Francis Lopez v. Alan Stanly*

San Diego Superior Court (Case No.: GIN029692)

15. Case Summary (05/2003 - 06/2005):

16       11. This case has been stayed by the involuntary bankruptcy petition filed herein.  
17 Lopez initially sued Stanly for breach of fiduciary duty, trespassing, conversion and invasion of  
18 privacy. All but the invasion of privacy claims were dismissed via a motion for summary  
19 adjudication. Stanly counter-claimed on a variety of claims, including breach of fiduciary duty,  
20 unfair competition and misappropriation of trade secrets. Stanly obtained many discovery  
21 sanctions against Lopez for his discovery violations. Because of the involuntary bankruptcy  
22 petition, the Court did not issue monetary sanctions against Lopez. However, prior to the filing of  
23 the bankruptcy petition, a discovery referee recommended the issuance of several thousand dollars  
24 of discovery sanctions against Lopez, and \$5,198.75 of discovery sanctions were issued against  
25 Lopez's counsel and co-Plaintiff. The Court also issued evidentiary sanctions against Lopez.

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KEEHN & ASSOCIATES, APC  
ATTORNEYS AND COUNSELORS AT LAW  
402 WEST BROADWAY, SUITE 120  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 467-3200 FAX (619) 467-2231

1     Summary of Dilatory / Bad Faith Tactics:

2         12.    Without justification or excuse, Lopez failed to provide any response to Stanly's  
3    First Set of written discovery propounded on him on December 31, 2003. Stanly filed a motion to  
4    compel discovery responses. During the extended meet and confer process, the parties worked out  
5    a resolution whereby Lopez paid Stanly \$600 in sanctions and provided Stanly with discovery  
6    responses. In exchange, Stanly took the motion off calendar.

7         13.    On July 28, 2004, Stanly propounded a Second Set of written discovery consisting  
8    of interrogatories, requests for admission and requests for production on Martin Hudacko  
9    ("Hudacko") and Lopez. On September 2, 2004, Hudacko and Lopez provided responses  
10    consisting solely of identical boilerplate objections, without a single substantive response. After a  
11    meet and confer process, Lopez provided some substantive responses, however, these responses  
12    were still woefully inadequate. In addition, Lopez sought a protective order as to certain  
13    discovery (based on trade secret protection) and others he claimed he had already answered  
14    appropriately.

15         14.    In November of 2004, Lopez moved to appoint a discovery referee. Stanly agreed,  
16    and Judge Sarokin was appointed as discovery referee based on the parties' stipulation.

17         15.    On January 7, 2005, Stanly submitted to Judge Sarokin a motion to compel the  
18    discovery responses of Hudacko and Lopez. On February 18, 2005, Stanly's motion was granted,  
19    and Judge Sarokin ordered Lopez to respond to the written discovery requests and produce  
20    response documents. The 02/18/2005 ruling of Judge Sarokin was entered as an order of the trial  
21    court.

22         16.    On March 4, 2005 (the ordered production date), Lopez failed, without justification  
23    or excuse, to comply with Judge Sarokin's 02/18/2005 Order by failing to provide any responsive  
24    documents to Stanly's requests for production of documents. Stanly made several requests to  
25    Judge Sarokin for an additional Order requiring Lopez to produce documents, and for the  
26    imposition of sanctions against Lopez. On March 24, 2005, Judge Sarokin issued another Order  
27    requiring Lopez to produce all responsive documents on or before March 18, 2005.

28         17.    On April 1, 2005, after persistent requests from Stanly's attorneys, and two Orders

1 from Judge Sarokin, Lopez finally produced approximately 50 pages of additional materials via  
 2 email. Although Lopez provided some documents, he still failed, without justification or excuse,  
 3 to provide a video tape and several documents specifically referred to in his discovery responses.  
 4 Further, Lopez failed to provide audio recordings and a CD ROM purportedly in his possession.

5       18.     On April 15, 2005, Stanly filed another motion to compel and request for monetary  
 6 sanctions against Lopez, requesting, amongst other documents, that the audio recordings be  
 7 produced. On April 28, 2005, Judge Sarokin granted Stanly's motion and demanded Lopez  
 8 produce all responsive documents, including the audio recordings and the CD ROM.

9       19.     After Judge Sarokin issued the 04/28/2005 Order, Lopez produced some audio  
 10 recordings, but failed, without justification or excuse, to produce any of the other documents he  
 11 had been ordered to produce.

12       20.     After several repeated requests for production of the missing documentation, Stanly  
 13 brought another motion to compel before Judge Sarokin. On June 24, 2005, Judge Sarokin  
 14 granted the motion, and issued evidentiary and monetary sanctions against Lopez in the amount of  
 15 \$2,000. A true and correct copy of that Order is attached as Exhibit 6 to the Exhibits  
 16 Compendium.

17       21.     On March 8, 2005, Lopez failed, without justification or excuse, to appear for the  
 18 deposition of Stanly that Lopez had noticed for that day, causing Stanly and his counsel great  
 19 expense and inconvenience.

20       22.     Without justification or excuse, Lopez repeatedly served deposition subpoenas on  
 21 third parties without providing notice of the Subpoenas to Stanly in an effort to secretly obtain  
 22 discovery without Stanly's knowledge. Stanly was only made aware of Lopez' failure to provide  
 23 notice of third party depositions after certain witnesses informed Stanly of the subpoenas. Judge  
 24 Sarokin issued evidentiary sanctions against Lopez for this conduct in his 06/24/2005 Report.<sup>3</sup>

25       23.     Pursuant to the terms of a protective Order issued by Judge Sarokin, and adopted  
 26 by the trial court, all parties were ordered to provide declarations detailing their use of corporate  
 27

28       3       See, Exhibits Compendium Tab 6.

1 funds for personal expenses. While Stanly complied with this request, Lopez did not. Lopez's  
2 declaration failed, without justification or excuse, to describe his use of corporate funds with any  
3 particularity. Stanly was forced to bring another motion before Judge Sarokin, requesting that  
4 supplemental declarations be ordered. In his 06/24/2005 Report, Judge Sarokin granted Stanly's  
5 motion and Ordered supplemental declarations be produced.<sup>4</sup>

6       24. Lopez refused to stipulate to limit his emotional distress claims pursuant to  
7 California Code of Civil Procedure §2032, despite Stanly's repeated requests and Lopez's  
8 representations that he would enter into a stipulation. Accordingly, Stanly moved for an Order  
9 requiring a medical examination of Lopez. Judge Sarokin issued sanctions against Lopez and his  
10 counsel in the amount of \$2,948.75 for their failure to initially stipulate. This ruling is contained  
11 in Judge Sarokin's 06/24/2005 Report.<sup>5</sup>

12       25.     On October 22, 2004, Stanly served Lopez with a request for a Statement of  
13 Damages. Lopez never provided it, despite multiple follow-up requests. Judge Sarokin ordered  
14 the Statement served, and Lopez failed to comply with that Order, insisting that the Statement had  
15 already been served on Stanly. Judge Sarokin issued monetary sanctions in the amount of \$1,245  
16 against Lopez for his failure to comply with his Order. This ruling was also contained in Judge  
17 Sarokin's 06/24/2005 Report.<sup>6</sup>

21 26. Stanly is the President of Enterprise Technology Holdings, Inc. ("ETH") which  
22 filed this action against Novcon Systems, Inc., a company whose common stock is all owned by  
23 Mrs. Lopez. ETH successfully obtained a preliminary injunction against Noveon, enjoining  
24 Noveon, and all those acting in concert with Noveon, from utilizing, selling, licensing or

See, Exhibits Compendium Tab 6.

See, Exhibits Compendium Tab 6.

See, Exhibits Compendium Tab 6.

1 marketing Prism's software (the company formerly owned by Stanly and Lopez). Thereafter,  
 2 without any proffered justification or excuse, Novcon simply stopped participating in the  
 3 litigation. Noveon's counsel admitted his client was not participating in the litigation and, as a  
 4 result, Noveon's counsel withdrew from the case on January 17, 2007. It appears Lopez decided  
 5 to stop doing business as Noveon, and let the company take the fall in the case. Lopez left the  
 6 company with no money, no assets and no appointed officers or elected directors.

7       Although all of the Noveon stock is in his wife's name, Lopez was the company's founder  
 8 and the person who had managed all the day-to-day operations. The last remaining issue in this  
 9 case is whether Lopez's wife is an alter-ego of Noveon and thus liable for the company's debts.

10 **Summary of Dilatory / Bad Faith Tactics:**

11       27.      In October of 2006, ETH propounded written discovery on Noveon. Noveon failed  
 12 and refused to respond to the discovery requests even after multiple meet and confer attempts, and  
 13 two telephonic conferences with Magistrate Judge Catherine Bencivengo.

14       28.      ETH filed a motion for monetary, issue, evidentiary and terminating sanctions  
 15 against Noveon based on its failure to provide any discovery responses. Noveon failed to oppose  
 16 the motion. On December 8, 2007, Judge Bencivengo granted ETH's motion and ultimately  
 17 issued evidentiary, issue and terminating sanctions.

18       29.      On August 16, 2007, the Court granted ETH's motion for a default judgment  
 19 against Noveon. A true and correct copy of that Order is attached as Exhibit 7 to the Exhibits  
 20 Compendium.

21                   **LOPEZ'S ALLEGATIONS OF UNFAIR BIAS**

22       30.      Lopez's apparent *modus operandi* in the Additional Lopez Cases was to allege  
 23 unfair bias against the judicial officers who issued sanctions or adverse rulings against him.

24       31.      In *Union Bank of California v. Francis J. Lopez, et. al.*, Lopez responded to Judge  
 25 Sarokin's adverse rulings (described above) by failing to pay his portion of Judge Sarokin's  
 26 referee fees, and filing a motion to disqualify him based on alleged bias. Based on Lopez's  
 27 allegations, Judge Sarokin resigned rather than respond to the motion. Lopez also alleged that  
 28 Judge Jacqueline Stern was biased against him. He filed a complaint against Judge Stern with the

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 402 WEST 320 ADONAY, SUITE 116  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 459-2200 FAX (619) 459-2201

1 | judicial counsel, and unsuccessfully moved to disqualify her.

2       32. Likewise, in *Francis Lopez v. Alan Stanly*, Lopez responded to Judge Michael  
3 Orfield's adverse rulings by alleging he was unfairly biased against him, and moving for  
4 disqualification. Judge Orfield voluntarily recused himself, and the case was referred to Judge  
5 Thomas Nugent.

FEES INCURRED FOR PREPARING SUMMARIES RE: LOPEZ'S MISCONDUCT

7       33.     The summaries of the Additional Lopez Cases discussed herein were specifically  
8 prepared for Stanly's bankruptcy counsel (Keehn & Associates, APC) by my office in support of  
9 Stanly's renewed request for monetary sanctions against Lopez in the above-entitled bankruptcy  
10 case. My office spent a total of 6.25 hours compiling the summaries, reviewing past documents,  
11 reviewing old case files and finalizing this declaration. Stanly was billed \$1,018.75 for actual  
12 legal fees incurred, as set forth below:

Attorney Timothy P. Dillon: 1.25 hour (\$215 per hour)

Attorney Sunjina Kaur Ahuja: 5.0 hours (\$150 per hour)

15 I declare under penalty of perjury under the law of the United States that the foregoing is  
16 true and correct, and that this Declaration was executed on this 26th day of September, 2007, at  
17 San Diego, California.

TIMOTHY P. DILLON

**KEEHN & ASSOCIATES, APC**  
ATTORNEYS AND COUNSELORS AT LAW  
400 WEST BROADWAY, SUITE 1210  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 459-2300 FAXSIMILE (619) 459-2301

# **EXHIBIT 4**

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Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
9317	8/1/2007	CKL [Billed: 1896]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	100.00	10.00
9345	8/3/2007	CKL [Billed: 1896]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.20	100.00	20.00
9356	8/6/2007	CKL [Billed: 1896]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	100.00	10.00
9431	8/23/2007	CKL [Billed: 1896]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.20	100.00	20.00
9956	9/2/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEW OF WORLD SAVINGS DOCUMENTS IN PREPARATION FOR UPCOMING DEPOSITION.	0.80	320.00	256.00
9973	9/4/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON DOCUMENT REVIEW AND PREPARATION FOR UPCOMING DEPOSITION.	1.00	320.00	320.00
9991	9/5/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) E-CORRESPONDENCE WITH CLIENT REGARDING VIDEO TAPE DEPOSITION.	0.10	320.00	32.00
9992	9/5/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON INITIAL PREPARATION FOR DEPOSITION OF FRANCIS LOPEZ.	1.10	320.00	352.00
10519	9/9/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORKED IN SUPPORT OF DEPOSITION OF FRANCIS LOPEZ REGARDING OUTLINE AND SUMMARY OF EVIDENCE PERTAINING TO REQUISITE ELEMENTS OF CLAIM.	1.30	225.00	292.50

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Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
10081	9/10/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEW OF DOCUMENTS AND RELATED PREPARATION FOR UPCOMING DEPOSITION	2.60	320.00	832.00
10082	9/10/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES GIVING NOTICE THAT LOPEZ WILL NOT ATTENED HIS 9/11/07 DEPOSITION	0.20	320.00	64.00
10331	9/10/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) PARALEGAL SUPPORT REGARDING ATTORNEY PREPARATION FOR UPCOMING DEPOSITION OF FRANCIS LOPEZ.	0.40	100.00	40.00
10333	9/10/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) PARALEGAL SUPPORT REGARDING COMPILATION OF TAX DOCUMENTS PRODUCED BY LOPEZ.	0.40	100.00	40.00
10086	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RR RECEIPT AND REVIEW OF E-CORRESPONDENCE FROM CLIENT REGARDING ISSUES WITH FRANCIS LOPEZ	0.20	320.00	64.00
10087	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RR RECEIPT AND PRELIMINARY REVIEW OF MATERIALS FROM TIM DILLON'S OFFICE FOR USE IN SUPPORT OF SANCTIONS MOTIONS AGAINST LOPEZ	0.80	320.00	256.00
10088	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.80	320.00	256.00
10140	9/13/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10141	9/13/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00

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10217	9/17/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10218	9/17/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) ECO E-CORRESPONDENCE TO JOHN HAYES REGARDING DEPOSITION ISSUES	0.10	320.00	32.00
10351	9/17/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.10	100.00	10.00
10553	9/18/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEWED SUMMARIES AND SUPPORTING DOCUMENTS PERTAINING TO LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS PROVIDED BY THE OFFICES OF DILLON & GERARDI, APC; WORKED ON DRAFT OF COMPREHENSIVE SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS IN SUPPORT OF PETITIONING CREDITORS' REQUEST FOR SANCTIONS; DRAFTED EMAIL CORRESPONDENCE TO ATTORNEY SUNJINA K. AHUJA IN SUPPORT OF SAME.	3.90	225.00	877.50
10240	9/19/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) TCW TELEPHONE CONFERENCE WITH ALAN STANLY REGARDING SANCTIONS MOTIONS AND RELATED ISSUES	0.40	320.00	128.00
10241	9/19/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON PREPARATION FOR LOPEZ DEPOSITION AND GROUND WORK FOR SANCTIONS MOTION	1.70	320.00	544.00
10253	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES REGARDING DEPOSITION	0.20	320.00	64.00
10254	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) TCW TELEPHONE CONFERENCE WITH CLIENT REGARDING FOLLOW-UP RE: SANCTIONS AND	0.30	320.00	96.00

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Ref No	Date	Staff	Client and Matter RELATED ISSUES	Hours	Rate	Amount
10255	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON DEVELOPMENT OF EVIDENTIARY RECORD FOR SANCTIONS HEARING*	1.60	320.00	512.00
10574	9/20/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RECEIVED AND REVIEWED EMAIL CORRESPONDENCE FROM ATTORNEY SUNJINA K. AHUJA REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; COMPLETED DRAFT OF COMPREHENSIVE SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS IN SUPPORT OF PETITIONING CREDITORS' RENEWED REQUEST FOR SANCTIONS.	1.30	225.00	292.50
10277	9/21/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON EVIDENTIARY SUPPORT FOR SANCTIONS MOTIONS	1.30	320.00	416.00
10586	9/24/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; DRAFTED CORRESPONDING COMPENDIUM OF EXHIBITS; DRAFTED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS.	6.60	225.00	1485.00
10403	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVISE AND EDIT PROPOSED DECLARATION FOR TIMOTHY DILLON	0.40	320.00	128.00
10404	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM CLIENT RE: SAME	0.20	320.00	64.00
10405	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON SANCTIONS MOTION	0.50	320.00	160.00
10588	9/25/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED COMPENDIUM OF EXHIBITS REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; REVISED AND FINALIZED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; DRAFTED DECLARATION OF L. SCOTT KEEHN REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS.	4.30	225.00	967.50

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Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
10409	9/26/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO MULTIPLE E-CORRESPONDENCE REGARDING DECLARATIONS	0.20	320.00	64.00
10410	9/26/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	0.40	320.00	128.00
10591	9/26/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEWED EMAILS FROM ATTORNEY DILLON AND CLIENT; REVISED DILLON DECLARATION.	0.80	225.00	180.00
10440	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	1.80	320.00	576.00
10441	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	0.30	320.00	96.00
10442	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.30	320.00	96.00
10599	9/27/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; WORKED IN SUPPORT OF FILING PETITIONING CREDITORS' RENEWED REQUEST FOR MONETARY SANCTIONS AGAINST LOPEZ.	0.30	225.00	67.50
10740	9/28/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RECEIVE, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES REGARDING SANCTIONS ISSUE.	0.20	320.00	64.00
10868	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	0.20	320.00	64.00

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Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
10869	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WOF WORK ON FOLLOW-UP REGARDING SANCTIONS MOTION	0.20	320.00	64.00
10871	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.90	320.00	288.00
10872	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	1.00	320.00	320.00
10961	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	1.00	320.00	320.00
10911	10/3/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10912	10/3/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10935	10/4/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WOF WORK ON FOLLOW-UP REGARDING PRESENTATION OF EVIDENTIARY MATERIALS IN SUPPORT OF SANCTIONS MOTION	0.90	320.00	288.00
10950	10/5/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
Daily Total (Billable)				42.30	11448.50	**
Grand Total (Billable)				42.30	11448.50	**

# **EXHIBIT C**

1 L. Scott Keehn, SBN 61691  
2 Leslie F. Keehn, SBN 199153  
3 KEEHN & ASSOCIATES  
4 A Professional Corporation  
5 402 West Broadway, Suite 1210  
San Diego, California 92101  
Telephone: (619) 400-2200  
5 Attorneys for Petitioning Creditors

## 5 | Attorneys for Petitioning Creditors

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 In Re: Case No. 05-05926-PBINV  
12 FRANCIS J. LOPEZ, DECLARATION OF TIMOTHY P. DILLON  
13 Alleged Debtor. [BIFURCATED PHASE II]  
14 Date: October 1, 2007 (Status Conference)  
15 Time: 10:30 a.m.  
16 Judge: The Honorable Peter W. Bowie  
17 Ctrm: 4  
18  
19

20 I, TIMOTHY P. DILLON, declare as follows:

1. I am an attorney duly admitted to practice before the Courts of this State. I am a  
shareholder of the law firm of Dillon & Gerardi, APC, counsel for Petitioning Creditor Alan  
Stanly ("Stanly") in certain cases involving the alleged debtor herein, Francis J. Lopez ("Lopez"),  
which were and/or are pending before the San Diego Superior Court and the United States District  
Court for the Southern District of California (the "Additional Lopez Cases"). In connection with  
the Additional Lopez Cases, I am the *shareholder in charge* of the engagement of the firm on  
behalf of Stanly, and the attorney within the firm who is most knowledgeable with respect to all  
aspects of the Additional Lopez Cases. I make this Declaration based upon facts within my

1 firsthand knowledge acquired in the course of conducting litigation against Lopez in the  
2 Additional Lopez Cases.

3           2.     The delay and bad-faith litigation tactics employed by Lopez and his counsel  
4 throughout the Additional Lopez Cases are summarized below.

*Union Bank of California v. Francis J. Lopez, et. al.*

San Diego Superior Court(Case No.: GIN 030827)

### 7 Case Summary (06/2003 ~ 09/2004):

8           3.     In or about June of 2003, Union Bank of California initiated a litigation against  
9 both Lopez and Stanly as guarantors of a loan which their corporation, Prism, had defaulted on.  
10 Both Lopez and Stanly filed cross-claims against each other for contribution and indemnity.  
11 Lopez and Stanly eventually settled with Union Bank. Stanly prevailed on a motion for good faith  
12 settlement and obtained a dismissal of Lopez's cross-claims. At time of trial, the sole issues left in  
13 the case were Stanly's claims against Lopez for indemnity and contribution. Trial in the Union  
14 Bank matter was continued several times due to Lopez's dilatory conduct, as more fully set forth  
15 below. When the Court finally held trial, neither Lopez nor his counsel appeared. Trial proceeded  
16 without Lopez.

## 17 | Summary of Dilatory / Bad Faith Tactics:

18       4.       On March 9, 2004, Lopez requested a trial continuance due to the "illness of his  
19 wife's aunt." Based on that request, the parties ultimately stipulated to continue the trial for four  
20 months — until July 9, 2004.

21       5.      On July 2, 2004 — the date of the trial readiness conference — Lopez's attorney,  
22 Joseph Fischbach ("Fischbach"), faxed a "Declaration re: Non-Readiness for Trial" to my office.  
23 A true and correct copy of that Declaration is attached hereto as Exhibit 1 to the "Compendium of  
24 Exhibits in Support of Renewed Request for an Enforcement Order Imposing Monetary Sanctions  
25 Against Alleged Debtor Francis J. Lopez" (hereinafter referred to as the "Exhibits Compendium")  
26 filed concurrently herewith. In his Declaration, Fischbach stated that he would be unable to  
27 appear for trial because he had scheduled another trial for July 7, 2004. This was the first time  
28 Fischbach had ever indicated that he would be unable to attend trial. He did not personally appear

1 at the trial readiness conference. Instead, Fischbach sent an *appearance counsel* to the trial  
 2 readiness conference who was not affiliated with Fischbach's law firm, and was unfamiliar with  
 3 the case. Because a "Declaration for Non-Readiness for Trial" is not a proper method of obtaining  
 4 a trial continuance, and Lopez did not properly apply for a continuance of trial, the Court had no  
 5 legal basis on which to order a continuance. The Court then confirmed that trial call would  
 6 remain set for July 9, 2004.

7 6. On July 9, 2004, Lopez and his counsel failed to appear for trial, and the trial court  
 8 issued an Order to Show Cause as to why sanctions should not be issued against them. A true and  
 9 correct copy of the Order is attached as Exhibit 2 to the Exhibits Compendium.

10 7. On July 16, 2004, Fischbach appeared before the Court and confirmed that he was  
 11 in trial on another matter on the dates set for trial in *Union Bank of California v. Francis J. Lopez*,  
 12 *et. al.* and stated that his failure to appear at the scheduled trial date was due to a mix-up with  
 13 co-counsel. No declaration of co-counsel was ever provided to corroborate the existence of the  
 14 mix-up or how it came to be. Additionally, Lopez provided declarations to the Court from himself  
 15 and his physician stating Lopez was suffering from "diverticulitis" and was too ill to participate in  
 16 a trial. A true and correct copy of the Declarations is attached as Exhibit 3 to the Exhibits  
 17 Compendium. This was the first time the Court had been advised of Lopez's purported  
 18 diverticulitis. Stanly was aware that Lopez could easily induce the aggravating symptoms of his  
 19 condition by eating popcorn. The Court continued the trial for approximately 60 days — until  
 20 September 10, 2004.

21 8. On September 9, 2004 — one day before the twice-continued trial was set to begin  
 22 — Lopez applied *ex parte* for a third trial continuance. A true and correct copy of the Ex Parte  
 23 Application is attached as Exhibit 4 to the Exhibits Compendium. Lopez claimed he was still  
 24 suffering from diverticulitis, and that the medication he took for it made him "groggy."<sup>1</sup> Lopez  
 25 further stated that he could not appear for trial due to scheduled colonoscopy and endoscopy

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 402 WEST BROADWAY, SUITE 1210  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 424-2581 FAXPHONE (619) 424-2591

26  
 27  
 28 1 See, Exhibits Compendium Tab 4.

1 procedures.<sup>2</sup> The evidence in support of Lopez's application was defective in that the declarations  
 2 were not signed under penalty of perjury under the laws of the State of California. The Court  
 3 ordered the application continued until September 10, 2004, and the Court's minute order  
 4 provided precise instructions to Lopez as to how to provide a competent declaration. A true and  
 5 correct copy of that Order is attached as Exhibit 5 to the Exhibits Compendium.

6 9. On September 10, 2004, Stanly appeared with a proposal for the commencement of  
 7 trial. Lopez appeared through *appearance counsel* who was not affiliated with Fischbach's law  
 8 firm, and was unfamiliar with the status of the case. Despite the Court's specific instruction, no  
 9 competent declaration was provided to support Lopez's request for a third trial continuance.  
 10 Based on that, the Court denied his request.

11 10. Trial proceeded on September 14, 2004, wherein Stanly obtained a judgment  
 12 against Lopez for \$50,000.

13 *Francis Lopez v. Alan Stanly*

14 San Diego Superior Court (Case No.: GIN029692)

15 Case Summary (05/2003 - 06/2005):

16 11. This case has been stayed by the involuntary bankruptcy petition filed herein.  
 17 Lopez initially sued Stanly for breach of fiduciary duty, trespassing, conversion and invasion of  
 18 privacy. All but the invasion of privacy claims were dismissed via a motion for summary  
 19 adjudication. Stanly counter-claimed on a variety of claims, including breach of fiduciary duty,  
 20 unfair competition and misappropriation of trade secrets. Stanly obtained many discovery  
 21 sanctions against Lopez for his discovery violations. Because of the involuntary bankruptcy  
 22 petition, the Court did not issue monetary sanctions against Lopez. However, prior to the filing of  
 23 the bankruptcy petition, a discovery referee recommended the issuance of several thousand dollars  
 24 of discovery sanctions against Lopez, and \$5,198.75 of discovery sanctions were issued against  
 25 Lopez's counsel and co-Plaintiff. The Court also issued evidentiary sanctions against Lopez.

26 ///

27

28

2 : *Id.*

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 421 WEST BROADWAY SUITE 1210  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 451-2800 FAX (619) 451-2211

1     Summary of Dilatory / Bad Faith Tactics:

2           12.   Without justification or excuse, Lopez failed to provide any response to Stanly's  
 3 First Set of written discovery propounded on him on December 31, 2003. Stanly filed a motion to  
 4 compel discovery responses. During the extended meet and confer process, the parties worked out  
 5 a resolution whereby Lopez paid Stanly \$600 in sanctions and provided Stanly with discovery  
 6 responses. In exchange, Stanly took the motion off calendar.

7           13.   On July 28, 2004, Stanly propounded a Second Set of written discovery consisting  
 8 of interrogatories, requests for admission and requests for production on Martin Hudacko  
 9 ("Hudacko") and Lopez. On September 2, 2004, Hudacko and Lopez provided responses  
 10 consisting solely of identical boilerplate objections, without a single substantive response. After a  
 11 meet and confer process, Lopez provided some substantive responses, however, these responses  
 12 were still woefully inadequate. In addition, Lopez sought a protective order as to certain  
 13 discovery (based on trade secret protection) and others he claimed he had already answered  
 14 appropriately.

15          14.   In November of 2004, Lopez moved to appoint a discovery referee. Stanly agreed,  
 16 and Judge Sarokin was appointed as discovery referee based on the parties' stipulation.

17          15.   On January 7, 2005, Stanly submitted to Judge Sarokin a motion to compel the  
 18 discovery responses of Hudacko and Lopez. On February 18, 2005, Stanly's motion was granted,  
 19 and Judge Sarokin ordered Lopez to respond to the written discovery requests and produce  
 20 response documents. The 02/18/2005 ruling of Judge Sarokin was entered as an order of the trial  
 21 court.

22          16.   On March 4, 2005 (the ordered production date), Lopez failed, without justification  
 23 or excuse, to comply with Judge Sarokin's 02/18/2005 Order by failing to provide any responsive  
 24 documents to Stanly's requests for production of documents. Stanly made several requests to  
 25 Judge Sarokin for an additional Order requiring Lopez to produce documents, and for the  
 26 imposition of sanctions against Lopez. On March 24, 2005, Judge Sarokin issued another Order  
 27 requiring Lopez to produce all responsive documents on or before March 18, 2005.

28          17.   On April 1, 2005, after persistent requests from Stanly's attorneys, and two Orders

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 442 WEST BROADWAY, SUITE 1230  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 466-2200 FAX/TELE (619) 466-2201

1 from Judge Sarokin, Lopez finally produced approximately 50 pages of additional materials via  
 2 email. Although Lopez provided some documents, he still failed, without justification or excuse,  
 3 to provide a video tape and several documents specifically referred to in his discovery responses.  
 4 Further, Lopez failed to provide audio recordings and a CD ROM purportedly in his possession.

5 18. On April 15, 2005, Stanly filed another motion to compel and request for monetary  
 6 sanctions against Lopez, requesting, amongst other documents, that the audio recordings be  
 7 produced. On April 28, 2005, Judge Sarokin granted Stanly's motion and demanded Lopez  
 8 produce all responsive documents, including the audio recordings and the CD ROM.

9 19. After Judge Sarokin issued the 04/28/2005 Order, Lopez produced some audio  
 10 recordings, but failed, without justification or excuse, to produce any of the other documents he  
 11 had been ordered to produce.

12 20. After several repeated requests for production of the missing documentation, Stanly  
 13 brought another motion to compel before Judge Sarokin. On June 24, 2005, Judge Sarokin  
 14 granted the motion, and issued evidentiary and monetary sanctions against Lopez in the amount of  
 15 \$2,000. A true and correct copy of that Order is attached as Exhibit 6 to the Exhibits  
 16 Compendium.

17 21. On March 8, 2005, Lopez failed, without justification or excuse, to appear for the  
 18 deposition of Stanly that Lopez had noticed for that day, causing Stanly and his counsel great  
 19 expense and inconvenience.

20 22. Without justification or excuse, Lopez repeatedly served deposition subpoenas on  
 21 third parties without providing notice of the Subpoenas to Stanly in an effort to secretly obtain  
 22 discovery without Stanly's knowledge. Stanly was only made aware of Lopez' failure to provide  
 23 notice of third party depositions after certain witnesses informed Stanly of the subpoenas. Judge  
 24 Sarokin issued evidentiary sanctions against Lopez for this conduct in his 06/24/2005 Report.<sup>3</sup>

25 23. Pursuant to the terms of a protective Order issued by Judge Sarokin, and adopted  
 26 by the trial court, all parties were ordered to provide declarations detailing their use of corporate  
 27

KEEHN & ASSOCIATES, APC  
 ATTORNEYS AND COUNSELORS AT LAW  
 402 WEST BROADWAY, SUITE 1210  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 230-2200 • FACSIMILE (619) 230-2201

28 <sup>3</sup> See, Exhibits Compendium Tab 6.

1 funds for personal expenses. While Stanly complied with this request, Lopez did not. Lopez's  
2 declaration failed, without justification or excuse, to describe his use of corporate funds with any  
3 particularity. Stanly was forced to bring another motion before Judge Sarokin, requesting that  
4 supplemental declarations be ordered. In his 06/24/2005 Report, Judge Sarokin granted Stanly's  
5 motion and Ordered supplemental declarations be produced.<sup>4</sup>

6       24. Lopez refused to stipulate to limit his emotional distress claims pursuant to  
7 California Code of Civil Procedure §2032, despite Stanly's repeated requests and Lopez's  
8 representations that he would enter into a stipulation. Accordingly, Stanly moved for an Order  
9 requiring a medical examination of Lopez. Judge Sarokin issued sanctions against Lopez and his  
10 counsel in the amount of \$2,948.75 for their failure to initially stipulate. This ruling is contained  
11 in Judge Sarokin's 06/24/2005 Report.<sup>5</sup>

12 25. On October 22, 2004, Stanly served Lopez with a request for a Statement of  
13 Damages. Lopez never provided it, despite multiple follow-up requests. Judge Sarokin ordered  
14 the Statement served, and Lopez failed to comply with that Order, insisting that the Statement had  
15 already been served on Stanly. Judge Sarokin issued monetary sanctions in the amount of \$1,245  
16 against Lopez for his failure to comply with his Order. This ruling was also contained in Judge  
17 Sarokin's 06/24/2005 Report.<sup>6</sup>

*Enterprise Technology Holdings v. Noveon Systems, Inc. et al.*

19 United States District Court for the Southern District of California (Case No.: 05-cv-2236)  
20 Case Summary (12/2005 - Present):

21       26. Stanly is the President of Enterprise Technology Holdings, Inc. ("ETH") which  
22 filed this action against Noveon Systems, Inc., a company whose common stock is all owned by  
23 Mrs. Lopez. ETH successfully obtained a preliminary injunction against Noveon, enjoining  
24 Noveon, and all those acting in concert with Noveon, from utilizing, selling, licensing or

See, Exhibits Compendium Tab 6.

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See, Exhibits Compendium Tab 6.

1 marketing Prism's software (the company formerly owned by Stanly and Lopez). Thereafter,  
 2 without any proffered justification or excuse, Noveon simply stopped participating in the  
 3 litigation. Noveon's counsel admitted his client was not participating in the litigation and, as a  
 4 result, Noveon's counsel withdrew from the case on January 17, 2007. It appears Lopez decided  
 5 to stop doing business as Noveon, and let the company take the fall in the case. Lopez left the  
 6 company with no money, no assets and no appointed officers or elected directors.

7 Although all of the Noveon stock is in his wife's name, Lopez was the company's founder  
 8 and the person who had managed all the day-to-day operations. The last remaining issue in this  
 9 case is whether Lopez's wife is an alter-ego of Noveon and thus liable for the company's debts.

10 **Summary of Dilatory / Bad Faith Tactics:**

11 27. In October of 2006, ETH propounded written discovery on Noveon. Noveon failed  
 12 and refused to respond to the discovery requests even after multiple meet and confer attempts, and  
 13 two telephonic conferences with Magistrate Judge Catherine Bencivengo.

14 28. ETH filed a motion for monetary, issue, evidentiary and terminating sanctions  
 15 against Noveon based on its failure to provide any discovery responses. Noveon failed to oppose  
 16 the motion. On December 8, 2007, Judge Bencivengo granted ETH's motion and ultimately  
 17 issued evidentiary, issue and terminating sanctions.

18 29. On August 16, 2007, the Court granted ETH's motion for a default judgment  
 19 against Noveon. A true and correct copy of that Order is attached as Exhibit 7 to the Exhibits  
 20 Compendium.

21 **LOPEZ'S ALLEGATIONS OF UNFAIR BIAS**

22 30. Lopez's apparent *modus operandi* in the Additional Lopez Cases was to allege  
 23 unfair bias against the judicial officers who issued sanctions or adverse rulings against him.

24 31. In *Union Bank of California v. Francis J. Lopez, et. al.*, Lopez responded to Judge  
 25 Sarokin's adverse rulings (described above) by failing to pay his portion of Judge Sarokin's  
 26 referee fees, and filing a motion to disqualify him based on alleged bias. Based on Lopez's  
 27 allegations, Judge Sarokin resigned rather than respond to the motion. Lopez also alleged that  
 28 Judge Jacqueline Stern was biased against him. He filed a complaint against Judge Stern with the

1 | judicial counsel, and unsuccessfully moved to disqualify her.

32. Likewise, in *Francis Lopez v. Alan Stanly*, Lopez responded to Judge Michael  
3 Orfield's adverse rulings by alleging he was unfairly biased against him, and moving for  
4 disqualification. Judge Orfield voluntarily recused himself, and the case was referred to Judge  
5 Thomas Nugent.

6 FEES INCURRED FOR PREPARING SUMMARIES RE: LOPEZ'S MISCONDUCT

7       33.     The summaries of the Additional Lopez Cases discussed herein were specifically  
8 prepared for Stanly's bankruptcy counsel (Keehn & Associates, APC) by my office in support of  
9 Stanly's renewed request for monetary sanctions against Lopez in the above-entitled bankruptcy  
10 case. My office spent a total of 6.25 hours compiling the summaries, reviewing past documents,  
11 reviewing old case files and finalizing this declaration. Stanly was billed \$1,018.75 for actual  
12 legal fees incurred, as set forth below:

Attorney Timothy P. Dillon: 1.25 hour (\$215 per hour)

Attorney Sunjina Kaur Ahuja: 5.0 hours (\$150 per hour)

15 I declare under penalty of perjury under the law of the United States that the foregoing is  
16 true and correct, and that this Declaration was executed on this 26th day of September, 2007, at  
17 San Diego, California.

TIMOTHY P. DILLON

KEEHN & ASSOCIATES, APC  
ATTORNEYS AND COUNSELORS AT LAW  
402 WEST BROADWAY, SUITE 110  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 332-2200 FAXSIMILE (619) 404-2201